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# PAPERS

RELATIVE TO

# THE BENGAL TENANCY BILL, No. II.

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# PAPERS RELATIVE TO THE BENGAL TENANCY BILL, No. II.

*Note by* BABU KISHORI LAL SIRKAR.

1. Clause (5) of section 5 is likely to operate to hardship on occupancy-raiyats who are fortunate to have large holdings. With the imperfect provisions on restriction of enhancement and on restriction of the right of ejectment in sections 7 and 12, respectively, it is hard to say that the position of a tenure-holder is better than that of an occupancy-raiyat. This being so, it would be probably lowering the position of an occupancy-raiyat; it converts him into a tenure-holder, and such a conversion clause (4) of section 5 will facilitate. Besides, the line of demarcation is too arbitrary and will be a source of increased litigation.

2. The object of the clause, as I apprehend it, is that in the case of such big holdings as exceed 100 bighas in area, the law should not prevent the accrual of occupancy-rights under such big holdings. This object is good and fairly represents the existing custom. I would maintain this object by altering the clause in the following manner:—

"Where in a holding there are three or more raiyats domiciled on parts of the holding, who hold lands belonging to the holding as khudkhast raiyats, the person to whom the holding belongs shall be presumed to be a tenure-holder unless the contrary be shown."

3. This would get rid of the arbitrary limit of 100 bighas and at the same time would make the presumption inapplicable to cases where there are no khudkhast sub-tenants, or where there are only one or two such tenants. No doubt the line of demarcation I propose is also arbitrary, but I believe it is less so, and will at all events be susceptible of easy proof.

4. But the above change is one that I propose in connection with another that I would suggest. I would have section 37 modified as follows:—

"Where under an occupancy-raiyat there are two or one raiyat domiciled on parts of the occupancy-holding and hold portions of the occupancy-holding as a khudkhast raiyat under the occupancy-raiyat, such occupancy-raiyat shall be deemed to be a tenure-holder in relation to such khudkhast holders under him, but in all other respects he shall be an occupancy-raiyat."

5. The above change also will get rid of a very arbitrary provision, while it will maintain the good object with which that arbitrary provision was made.

6. I have suggested the above changes in view of what I know and believe to be the prevailing customs, such customs being that domiciled sub-raiyats are allowed practically almost the same rights *quoad* the lands they hold as the raiyats under whom they hold, while sub-raiyats who, not being domiciled on any portion of the tenure, hold portions of the tenure as outsiders or paikast raiyats are seldom deemed to possess any permanent or secure rights, except when there has been an express written contract creating such rights.

7. As a sequence of what I have said I would propose the removal of section 38, for the rights of khudkhast sub-raiyats being secured as above (they being in effect declared to be occupancy-raiyats), the rights of non-khudkhast sub-raiyats may well be left alone; only it may be provided in the case of non-khudkhast sub-raiyats they shall be presumed to be tenants from year to year unless the contrary were shown.

8. The above suggestions I make with great diffidence, and I am not prepared to press for their adoption without thorough discussion and consideration.

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9. I would next say a word about section 41. The clause providing for the term of the contract being at least seven years in certain cases is, I think, one of which zemindars may take an undue advantage by misinterpreting it to ignorant raiyats, and by inducing them to believe that they are bound to give some increase of rent every seven years. I wish the mention of the period of seven years might be omitted, and at the same time some expression might be used to show that an increase of two annas per rupee would be more encouraged than an increase of four annas in the rupee.

10. I should also wish that the powers given to the collectors in the chapters of "Record of-rights," "Settlement of Rent" and "Table of Rates" might be limited to recording existing rights, settling existing rents and recording existing rates without the power of making enhancement in any of these cases. My reasons are, first, that it is not safe to leave the power of enhancement to the discretion of individual executive officers, whose inclinations, which vary very greatly, generally influence their decisions; second, that to impose on them the duty of enhancing rates would be imposing on them a task too heavy, if not altogether impossible, for them to discharge.

11. To clause (1), section 281, an exception should be made to the effect that when any char land is the re-formation of, or accretion to, any holding, the right to such land shall be according to the law of accretion and re-formation.

12. If the Bill be so changed as to leave any occupancy-tenure as a non-transferable holding, an exception shall have to be made to section 78 for such occupancy-tenures.

13. On the question of enhancement for increase of price, I should have pointed out in my last letter that the ground as it is now put is so far unfavourable to the raiyat, compared with the ground in the present law, as it is made independent of the actual produce, which may have diminished in quantity. Hence the necessity of the safeguards.

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*P. S.*—I should have added in my last note that the definition of "settled raiyat" as in the Bill would injuriously affect raiyats of villages which happen to be washed away by the river.

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No. 2071T.R., dated 29th September 1884.

From—Officiating Under-Secretary to Government of Bengal,

To—The Secretary to Government of India, Legislative Department.

In continuation of Mr. MacDonnell's letter No. 1993T.R., dated 23rd September, 1884, I am directed to submit, for the information of the Government of India, a copy of a letter dated 16th idem, from the General Secretary to the Behar Indigo-planters' Association, with its enclosures, containing the Association's views on the provisions of the Bengal Tenancy Bill regarding the transferability of occupancy-right and the raiyat's right to sublet his holding.

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Dated 16th September 1884.

From—W. B. Hudson, Esq., General Secretary to the Behar Indigo-planters' Association,

To—The Secretary to the Government of Bengal, Revenue Department.

I have the honour to forward herewith, for submission to His Honor the Lieutenant-Governor, copies of proceedings of our Association at two meetings held at Mozufferpore on the 26th of July and 16th of August respectively, the one called to discuss the transferability of occupancy-rights, the other the raiyat's rights to sublet his holding and the restriction placed on such right in the Bill.

2. I have no doubt His Honor is already aware of the great importance the members of the Association attach to those portions of the Bill which treat of these two subjects, and also of the opinion we hold that it is only by a just and fair treatment of the portions of the Bill referring to transfer and subletting that we, in common with all traders, can ever hope to be in a position to treat with the cultivators of the soil on fair and equal terms. To us as a class they are of paramount importance. The foundations of all trade are security and credit—the one dependent on the other. Any attempt to lower the raiyat's credit by depreciating the value of the security he should be in a position to offer, any attempt to make the security he could otherwise offer dependent on the good-will of others, must, from the very nature of any business, make it impossible for the raiyat to meet us on advantageous terms and compel us to propitiate the landlord before entering into any arrangement with the tenants.

3. Relying on the views repeatedly expressed by the members of the Government on the subject, we have presumed that the principle of embodying transferability and the right to sublet amongst the incidents attached to an occupancy-holding has been definitely decided upon, and that it was no longer open to discussion. We have to a certain extent

followed the suggestions made to Commissioners of Divisions in your letter of the 24th of May last, and confined our discussion mainly to the restrictions placed on them in the Bill, and such other restrictions as we thought might be submitted with a view to attain the object we understand His Honor desires, that is, to prevent the land falling into the hands of persons who would purchase it with the sole object of making a profit by rack-renting.

4. We deem it, therefore, unnecessary to defend, by any elaborate arguments, the general principle of transferability of occupancy holdings, or the necessity for making provision for such in the Bill; but should His Honor, after receiving the additional information called for in your letter of the 24th of May, or when, as indicated in your letter, the provisions of the Bill "have been tested in the light of local experience and existing facts," deem it necessary to recommend a modification of the "principles" of the Bill, we trust His Honor will allow us, who are more interested in this subject than the landlords, and equally as much as the raiyats, an opportunity of again submitting our views on it.

## BEHAR INDIGO PLANTERS' ASSOCIATION.

*Proceedings at a General Committee Meeting held at the Planters' Club, Mozufferpore, on Saturday, the 26th of July 1884.*

PRESENT:

The Hon'ble T. M. Gibbon, C. I. E.
Dr. J. H. G. Hill, of Turkaulia Concern.
Mr. E. Macnaghten, of Begumserai Concern.
„ W. O. MacGregor, of Aroa Concern.
„ W. B. Hudson, General Secretary.

The above members met at the appointed hour, 8 A.M. After having waited till 9 o'clock, and a quorum of General Committee members not having been formed, it was proposed—

That the meeting be made a general one for discussion of the notified points of the Tenancy Bill (carried).

The following then formed the meeting:—

The Hon'ble T. M. Gibbon, C.I.E.

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|---|---|
| Dr. J. H. G. Hill. | Mr. A. MacRae. |
| Mr. E. Macnaghten. | „ M. Mackenzie. |
| „ T. J. Fraser. | „ A. H. Rennie. |
| „ W. O. MacGregor. | „ R. Hudson. |
| „ H. Collingridge. | „ W. B. Hudson. |

*Read*—Letters from General Committee members apologizing for non-attendance.

BUSINESS.—1. Transfer. Sections 3, 10, 11, 23, 28, 31F, 31H, 77, 97.
2. Registration. Sections 15 to 22 inclusive.
3. Pre-emption. Sections 32 to 36 inclusive.
4. Incumbrances. Sections 175 to 192.
5. Contract. Section 210.

MR. GIBBON'S NOTE.

*Section* 3 (*10*).—Transfer covers mortgage.

Not only usufructuary mortgage—mortgage with possession, foreclosure on mortgage, but also a "lien."

It is difficult to draw the line between an usufructuary mortgage, a zarpeshgi mortgage, and a transfer in the wide sense of the word.

If transfer did not cover mortgage, the effect *might* be to prevent the raiyat raising money on a mortgage or simple lien. The fear is that the landlord may, by exercising the right to pre-empt given him under the Bill, interfere with legitimate trade.

I myself think the pre-emption clauses have been so framed that the landlord can only pre-empt on a foreclosure and on voluntary transfer.

It should be remembered that the Calcutta Rent Law Commission wished to allow transferability, but to prohibit mortgage; also sale by a decree of court other than a sale under a decree for arrears of rent.

P. 17, para. 32, and also their Bill.

Transfer of permanent tenures, such as (istamrari mokarrari tenures, &c.,) occupancy holdings at fixed rates of rent, and tenures by reason of the raiyat having sublet more than half his holding under section 37, are subject to one law: the transfer of ordinary occupancy holdings are made subject to another. The first are made subject to the provisions of the Chapter on Registration: the second to pre-emption on the part of the landlord.

Sections 11, 23, 37, 15 to 22 inclusive.

Section 31, subject to 32-36.

*Section 16.*—When a permanent tenure or a holding at fixed rates is to be sold up under a decree of court for a debt other than a decree for an arrear of rent, the court will serve notice of transfer on the landlord.

*Section 33.*—A landlord cannot pre-empt after sale under a decree of a competent court, but the bid of a landlord and a bid of a third party being the same, the landlord's bid will receive the preference.

*Section 18.*—Until a transfer is registered by the landlord, the transferer and transferee are jointly liable to the landlord for the rents of the tenure.

*Section 19.*—When the tenure is sold up at the instance of the landlord, the landlord is bound to register without any fee.

*Section 19 (1).*—Landlords refusing to register can be compelled to register under an order of court [section 22 (2)]; and may be fined for refusing, unless [section 19 (2)] they can show sufficient cause for doing so.

My objection to the above is that section 23 should be confined to actual mokarrari tenures or holdings that have been declared by a competent court to be held at fixed rates; if this is not done, every person who wishes to evade the provisions of the pre-emption clauses will plead protection under section 23.

Every landlord who would not otherwise wish to pre-empt may be obliged to exercise his right in order to set aside a claim to hold at fixed rates for ever after.

The landlord will be obliged to contest the claim for fear any "laches" on his part may enable the transferee to acquire rights he otherwise would not possess.

Every raiyat who is sold up under decree of court for arrears of rent may contest the legality of the sale by declaring it incorrectly described under 178 and 179 (the sale sections having also been made applicable to holdings at fixed rates under section 182). It is to our interest to lessen litigation, not to encourage it.

*Section 32.*—The transfer of an ordinary occupancy holding is placed under restriction, it is made subject to pre-emption on the part of the landlord.

*Section 32 (2).*—To enable the landlord to come to a decision as to whether he will exercise his right or not, the would-be transferer must give the landlord intimation six weeks in advance of his intention to sell with all particulars of sale in order to permit of his valuing the holding, &c.

I presume that the landlord would, if he pre-empted without the assistance of the court under section 32 (4), have of take his chance of any claims on the property being made after transfer, and of which the raiyat had failed to inform him previous to sale. If the landlord claims the land at a valuation placed upon it by the court, the raiyat may elect to retain the land and not sell.

Section 32 (4).

If the raiyat does conform to the law and sells without allowing the landlord the option of taking, the sale is void as against the landlord.

What the effect of this would be I do not quite realize; a lawyer must decide. I believe it would allow him to pre-empt at his convenience, or he might, after a certain time, more particularly if the transferer left the estate or ceased to reside on it, treat the holding as abandoned. Although the Bill does not and cannot provide for the would-be purchaser, seeing that the intention to transfer is properly notified to the landlord, intending purchasers would act wisely in seeing such notices served, or they may find the land in possession of others and themselves minus their money.

*Section 36.*—Allows a proprietor who collects his rents direct from his raiyats without the aid of middlemen to pre-empt. It allows permanent tenure-holders who collect from their raiyats to pre-empt. It allows middlemen who hold the written sanction of their proprietors to pre-empt.

But it does not allow thikadars or ijaradars to pre-empt without the written consent of the proprietor, and it does not allow the proprietor to pre-empt where his ijaradar refuses to act for him.

*Sections 11-23-31F.*—All holdings, whether permanent tenures, holdings at fixed rates, or ordinary occupancy holdings, may be transferred in the same manner, and to the same extent, as other immoveable property, but nothing in the Act will entitle a tenant, whose holding is transferable, to transfer or bequeath, without the consent of his landlord, a portion only of the holding, so that it may be held by the transferee as a separate holding.

Section 97.

The landlord's interests are in so much protected that he may, if his rents fall into arrears, sell up the whole holding and decline to divide it. He may also, if he likes, take a *salami* and allow the portion sold to be held as a separate holding, but there is nothing to prevent a raiyat mortgaging first one field and then another, and registering each such mortgage as an incumbrance under 177 and following sections, or selling his lands piecemeal. Each such act would be legal as against the transferer, and against any third party wishing to purchase or lend money on the whole holding, and such would to a certain extent in some instances hold good as against the landlord in his capacity of transferee.

*Section 31 (h).*—In case the tenant dies intestate, the property would descend to his heir in the same way as other immoveable property. Although the Bill does not make direct mention of it, I presume the land might be divided among the heirs.

INCUMBRANCES.

*Sections 175 to 192.*—When discussing transferability, we must not lose sight of the very important chapter on sale for arrears under decree, and the extent to which our interests will be affected by its provisions. All interest in land is in this chapter (section 75) divided into three classes, *viz.*—"Protected interests," "Registered and notified incumbrances," and "Voidable incumbrances."

Section 176.

"Protected interests" go with the land, whoever the purchaser may be. It means shortly that be the title what it may on which the defaulter holds his land from his landlord, the fact of the holding being sold for arrears of rent shall not set aside the title: the purchaser shall hold the land under the same title and with the same rights the defaulter held it on.

*Section 177 (a).*—Incumbrance means any lien, sub-tenancy, easement, or any other right or interest created by the tenant on his holding, or in limitation of his own interest therein, and not being a protected interest as defined in section 176.

A registered and notified incumbrance means an incumbrance created by an instrument registered under the Indian Registration Act of 1877, and of which a copy has not less than 3 months before the accrual of the arrear been served on the landlord in the manner provided.

Sections 177 (B), 192, and 193.

*Sections 179 (a) and 180.*—All permanent tenures, all holdings at fixed rates of rent (section 182), must first be sold for arrears of rent subject to their registered and notified incumbrances.

*Section 181.*—If the price offered is not sufficient to cover the arrears, the landlord may elect to hold a re-sale of the tenure with power to void all incumbrances.

An incumbrance not registered and notified is voidable. All transfers of tenures after the passing of the Act must be registered under Chapter III of the Bill.

*Section 177 (b).*—All incumbrances already registered before passing of the Act may be notified 3 months before arrear becomes due.

*Sections 192 and 193.*—All incumbrances created, but not registered, may, provided their registration is not compulsory under section 17 of the Registration Act, be registered and notified within one year from the passing of the Act.

*Section 183.*—An ordinary occupancy holding may be sold free of incumbrances for arrears of rent.

The only protection given to an incumbrance in a sale of an ordinary occupancy holding for arrears of rent is—

*Section 186d. 1st.*—If there is any surplus after satisfying decree, the surplus shall remain 2 months in court to allow creditors to bring forward their claims.

*Sections 188 and 189. 2ndly.*—A person having a voidable interest in the land may pay the amount of the decree into court, and such payment shall entitle him to possession of the holding until the debt is discharged.

*Section 185.*—The Local Government may, by notification in the Gazette, apply the same rule to occupancy holdings as apply to permanent tenures.

*Sections 190 and 191.*—A decree-holder may bid at a sale for arrears of rents, the judgment-debtor may not.

*Sections 313 to 326.*—Of C. P. C., providing for the setting aside of the sale on the application of the purchaser, is excluded from the operation of this chapter.

Sections 313 to 326 of C. P. C.

Under Chapter XVII, section 210—

A raiyat with transferable occupancy rights cannot contract himself out of the right to transfer. Tenure-holders "*may*" do so if they *wish*. Query, may raiyats holding at fixed rates? In reference to the provisions regarding incumbrances, I would only say that I would like to see no distinction made between permanent tenure-holders and occupancy raiyats: all should have their holdings sold up subject to notified incumbrances. If there is to be a distinction, a raiyat whose right to hold at a fixed rate has not been decided by a competent court, should be subject to the same law in this respect as the ordinary occupancy raiyat. It must be remembered that raiyats who sublet more than half their holdings will only receive the benefit of the notified incumbrance clauses after the passing of the proposed new registration law.

I need not say that I strongly approve of the power to contract themselves out of their right to transfer being withheld from raiyats with occupancy rights.

T. M. GIBBON.

Much discussion ensued, more especially on the point of zarpaishgi mortgages being deemed by law Deeds of Transfer. By far the largest "dealings with raiyats" for land are now conducted on this basis, and any interference with transfer, or any restrictions on it as they now stand in the Bill, would have a most injurious effect on our business, and make the reiterate advice of officials, and even of the Bengal Government itself, that we should deal only with the raiyat for land for indigo cultivation, a mockery.

On the other hand, it would be most injurious to the raiyat. His only way of getting money at fair interest will be closed, and the present universal custom of raising money to pay off arrears of rent or other debts by giving over a small portion of his holding on zarpaishgi mortgage will be subverted, and the consequences be that he will fall entirely into the hands of the mahajans.

We have never looked on a zarpaishgi mortgage as a regular transfer. For instance, a raiyat owes Rs. 40 to his mahajan, or for arrear of rent. He comes to us, complains that he is paying 36 per cent. interest and offers one bigha of his land for 8 years at an annual rent of Rs. 5, the rent to go as a set-off against the loan. At the end of the period the land reverts to the raiyat. This is the cheapest way any raiyat can get out of a difficulty. It is fast becoming the universal custom of North Behar, and by fostering it it will do more for the raiyat and less harm to the zemindar than any system of takavi advances that Government can organize.

The following points were noted by the General Secretary for reference to counsel for opinion, *viz.* :—

(*a*) What effect has the word "void" in section 32 (5) as against a transferee?

(*b*) What would the landlord's remedy be?

*On section 23.*—The meeting was of opinion that the permission to raiyats holding at fixed rates to use their holding in such way as to render it unfit for agricultural purposes should be limited to raiyats whose right to *hold* at *fixed rates* has been decided by court.

*Sections 175 to 192.*—In reference to the above, the meeting considered it advisable that *occupancy holdings* should be placed on the same footing as tenures, *viz.*, they should be *first* sold subject to incumbrances.

(*a*) If it be necessary to give the landlord any consideration to induce him to sanction transfer, his power of veto or pre-emption should be taken from him, and a registration fee on all transfers allowed him in place of it.

(*b*) If the landlord's right of pre-emption is to be retained in the Bill, all occupancy holdings other than those at *fixed rates* by virtue of a decree of court should be subject to pre-emption the same as ordinary holdings.

(*c*) If it be necessary to place any restriction on transfer with a view to prevent land jobbery and rack-renting, it would be better to forbid the transferee sub-letting or re-transferring within a given time, say three years, than to provide restrictions that will affect others than transferees.

After discussion Mr. Gibbon proposed as above (*c*).

Mr. MacGregor proposed as an amendment—

That if the entire holding only is to be transferable, the transferee should be allowed to sublet, but not to enhance, *i.e.*, demand more rent than he pays himself to his landlord.

On these being put to the meeting, the votes for each were found to be equal.

On the Secretary asking the opinion of the meeting as to whether the transfer of a portion of a holding should be allowed, or only the whole as it stands on the rent-roll, the question was discussed freely. Mr. MacGregor urged strongly that as planters we did not want to purchase raiyats' jotes, but only a few kottas probably of each when the land was high and fit for indigo; consequently that, unless a portion of a holding were transferable, planters would not avail themselves of transfer to any large extent. Most of those present disagreed with him as to the advisability of permitting transfer of a portion of a holding as being unfair to landlords.

On the question of what our general proposition should be as to transfer—

Twelve different modes of treating transferability were cited by Mr. Gibbon, *viz.* :—

1. As it stands in the Bill.

2. Transferability with right reserved to landlord to pre-empt on all transfer—transfers of tenures as well as on transfer of occupancy holdings.

3. Transfer with right reserved to landlord to pre-empt on transfer of all occupancy holdings other than occupancy holdings at fixed rates decreed by a court of law.

4. Any of the above with power reserved to the raiyats to contract themselves out of their rights.

5. Any of the above with additional restrictions on sub-letting or other restrictions to prevent land jobbing.

6. Transfer of the "whole" of the holding without restriction, but with prohibition of a transfer of a portion, giving the landlord a remedy in case of transfer of a portion without his consent.

7. Free transfer.

8. Transfer to resident cultivators to be alone permitted.

9. Transfer with restriction by landlord on receipt of fee.

10. Absolute prohibition of transfer.

11. Make no mention of transfer.

12. Transfer permitted by voluntary sale or by decree of court for arrears of rent; in no other case mortgage prohibited.

Of these No. 7, free transfer of the whole holding was decided by the meeting to be most desirable.

Mr. Gibbon said he would propose that transfer of the whole holding be unrestricted, but subject to a registration fee to the landlord as above, and that transfer of a portion be prohibited, giving the landlord a remedy.

The meeting adopted his view.

*Section 210. Contract.*—Power of raiyat to contract himself out of his rights objected to by zemindar.

Read letter from Supreme Government of Bengal, dated 5th of April 1884 (paragraph 28), referring to a suggestion on the part of the zemindar, that raiyats should be allowed to contract themselves out of their rights to transfer and sublet.

The meeting was of opinion that the raiyat should not be allowed to contract himself out of his right, as his ignorance and apathy would most certainly be traded on as Mr. Gibbon remarks.

But if Government are prepared to make provision in the Bill to see that the raiyat acts, or has acted, as a free agent, receiving a fair equivalent in surrendering his undoubted right, the meeting would be prepared to support the zemindars' proposal.

W. B. HUDSON,
*General Secretary, B. I. P. Association.*

*N. B.*—The date of the next meeting was fixed on the third Saturday in August, *i. e.*, 16th of August 1884.

## BEHAR INDIGO-PLANTERS' ASSOCIATION.

*Proceedings at a General Committee Meeting held at the Planters' Club, Mozufferpore, on Saturday, the 16th August 1884.*

PRESENT:

The Honorable T. M. Gibbon, C.I.E.,
Dr. J. H. G. Hill,
Messrs. M. Gale,
M. Macleod,
T. J. Fraser,
Robt. Wilson,
H. C. Spry,
W. B. Hudson,
} Members of the General Committee.

Many other planters were also present watching the proceedings.

Dr. Hill was requested to take the chair.

*Business.*—The proceedings of last meeting confirmed.

II.—The General Secretary requested the Chairman to put the question to the Meeting whether the proceedings of this day should conclude the discussion of the Tenancy Bill for the present, until the proceedings of the official conferences have been published.

The Meeting decided that another meeting should be held next month, on the 15th of September or other date to be notified by the Secretary, when he had applied to Government for a copy of the proceedings of the Bankipore Official Conference.

In accordance with the notice of the *Subjects for discussion* at the present meeting Mr. Gibbon was requested by the Chairman to commence with—

(A)—*Subletting* and its incidences in the Bill.

(B)—*Restrictions*, sections 31(G), 37, 38.

(C)—*Protection* to under-raiyats, sections 62 and 63.

(D)—*Surrender and abandonment*, Chapter XIII, Distraint, more especially sections 139c 2 & 3, 154, 155, 156.

(E)—*Incumbrances*, Chapter XV, particularly sections 177, 178(6), 183, 188(1), 189.

(F)—*Contract*, section 210.

Sections 37 and 38 containing restrictions on sub-letting were first discussed by several members who had not been present at the last meeting. The several discussions on this point at former meetings were gone through.

It was strongly urged by several members that the period allowed by the Bill was insufficient and contrary to the present custom of these districts of Behar, and on reference by the Secretary to the proceedings of our last meeting [remark (C)] he was requested to record the opinion of the meeting that Mr. Gibbon's proposal should be adopted, *viz.*—

"That if Government deem it necessary to restrict subletting of occupancy-holdings with a view to discourage land-jobbing, such restriction should be made applicable only to holdings that are sublet *within a given time* of a transfer or purchase."

Mr. Robert Wilson proposed that we should go further on this point, and that to prevent all land-jobbing and rack-renting no enhancement should be allowed by transferees.

It was pointed out that this was substantially the same as Mr. Macgregor's proposal at our last meeting, and also that the votes for and against that proposal were equal. On being put to the vote the Chairman declared it carried that the proposal as is stood in last meeting's proceedings be adopted by this meeting, *viz.*—

"If it be necessary to place any restriction on transfer with a view to prevent land-jobbing and rack-renting it would be better to forbid the transferee subletting or transferring within a given time, say, three years, than to provide restrictions that will affect others than transferees."

It was pointed out by Mr. Gibbon that to give effect to Mr. Wilson's proposal it would be necessary to enact that a transferee sub-letting the land should not recover from his sub-tenant more rent than he pays his landlord, and that he agreed with Messrs. Wilson, Macgregor and others that this was desirable in every way, but that, however stringent the law might be, it could always be evaded by the transferee demanding a bonus and letting the land from year to year—a bonus at the commencement of each year and the usual rent at the end of it.

*Surrender and abandonment.*—Section 95.—Messrs. Fraser and Spry pointed out to the meeting the position a sub-tenant was placed in where an occupancy-raiyat in collusion with his landlord resigned or abandoned his holding for the purpose of voiding a sub-lease. This was discussed at much length and various remedies suggested, but all were open to the objection that any recommendation made by planters would be looked on as an attempt to secure their own interests to the detriment of the zemindars. The broad fact is well-known to the officers of Government that tenants-at-will, and much more sub-tenants, are at mercy of their zemindar unless in the latter case full protection is afforded then in cases of collusion between superior and inferior landlords. Where planters are sub-tenants they must take their chance with the rest of the class.

*Distraint* and incidence on sub-tenants. Sections 139, 139 (2) and (3), 154, 155, 156.

The above were read and discussed, and the opinion of the meeting taken on each.

Mr. Gibbon reminded the meeting of the recommendation of the Behar Rent Committee of 1878 concurred in by the planter members.

*Note.*—On reference to those proceedings it is found that it was then proposed by Mr. Gibbon "that the Law of Distraint be entirely abolished, and that the summary procedure suggested in the Bengal Bill (1878) for the more speedy realization of rents be adopted in its place," and that the following members of the Behar Rent Committee voted in favour of that proposal, *viz.*—

Mr. F. M. Halliday, Commissioner of Patna.
„ C. F. Worsley, Collector of Mozufferpore.
„ G. Anderson, Planter and Zemindar.
„ T. M. Gibbon „ „
„ W. B. Hudson, Planter.
„ J. F. Browne, Judge, Patna.
Mr. D. N. Reid, Planter.
„ G. Toynbee, Collector, Patna.
„ M. Finucane, Settlement Officer (Secretary).
Baboo Bimala Ch. Bhattacharjee, Deputy Magistrate.

This recommendation not having been acted on, that is, Government not having provided a summary procedure to facilitate the recovery of disputed arrears of rents, we are not in a position to urge the total abolition of distraint with all its attendant abuses. But with free transfer the value of occupancy holdings in the market will be so increased that there should be no real difficulty in recovering any rent due by decree and sale of holdings, and the abolition of distraint be merely a question of time.

*Protection* afforded to sub-raiyat by sections 148 (2), 154, 154 (3), 155 (1), 156 noted.

Under the circumstances the meeting did not desire to record any opinion on the subject.

*Incumbrances.*—Chapter IV, more specially in reference to sub-letting, sections 177, 178(*b*), 183, 188 (1), 189.

These were discussed and many questions put to Mr. Gibbon as to the intention of the framers of the Bill on several points.

It was ultimately decided that the following point should be put to Counsel for opinion, *viz.*—

*Query.*—Reading section 177 with 97—

Whether a mortgage of a portion of a holding by any occupancy-raiyat would be considered an incumbrance under section 177 and receive the same protection as is afforded to mortgages of whole holdings under the Bill?

*Contract.*—Section 210. The meeting was unanimously of opinion that if this section is not upheld in its entirety, the Bill will afford no real protection to the raiyat under the

present state of matters in Behar, and that Mr. Gibbon should urge strenuously the maintenance of this section in its entirety.

With a vote of thanks to the Chairman, the meeting concluded.

W. B. HUDSON,
*General Secretary, B. I. P. Association.*

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*Memorial of Committee of Orissa People's Association, dated 21st October 1884.*

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*To His Excellency the Viceroy and Governor-General of India.*

The humble memorial of the Committee of the Orissa People's Association, Cuttack,—

MOST RESPECTFULLY SHEWETH,—That your Excellency's memorialists have come to learn with regret that the bloodthirsty zamindars, knowing that the new Tenancy Bill is sure to be passed, have been inciting the tenants of Government khas mahals to introduce the provisions of the Bill in the khas mahals.

2. The motive of this conspiracy with the tenants is that Government will at least give to the zemindars the same rights which it reserves to itself in these estates.

3. Your memorialists have also learnt with regret that the zamindars have conspired to induce some ignorant raiyats (completely under their thumb) to make some agitation against the Bill, with a view to serve their own ends, when the next Viceroy comes to Your Excellency's place, and thus delay the passing of the Bill.

4. Your memorialists beg to state that the *Statesman* newspaper has now become an organ of the zemindars, and has particular connection with the big zemindar family of Paikpara near Calcutta. The opinions of this paper should be taken to be those of zemindars only.

Your memorialists therefore pray that the Bill in question may be passed by Your Excellency in Council without delay, and that the huge conspiracy of the zemindars, got up at great expense, be put down.

And your memorialists, as in duty bound, shall ever pray.

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*To His Excellency the Viceroy and Governor-General of India in Council.*

The humble memorial of the middle tenure-holders of the sub-division of Jheenedah in the district of Jessore,—

MOST HUMBLY SHEWETH,—That Your Excellency's memorialists as belonging to an important class interested in the Rent Law of the land beg leave to put their humble case before Your Excellency in Council, in order that the Tenancy Bill now pending before the Legislative Council may be so modified as to render justice to Your Excellency's memorialists as regards their rights and status.

That the holding of land by the middleman is an ancient institution of the country. That as an indispensable incident of the social constitution of the nation, this system of tenures has always been recognised by the common law of the country.

That the Code of Manu clearly indicates the origin and status of the middlemen holders by recognising the fact that between the village community and the lord of hundred villages, there was the lord of ten villages. That in the time of Mahomedan Government, the zemindar of a whole pergunnah stood in the place of the lord of hundred villages, and the dependent talookdars filled the place of the lord of ten villages.

That, unfortunately, the British Indian Government has in no case so completely misunderstood the status and rights of a class as in the case of middlemen. That the British Indian Legislature has deemed the idea of a middle holding accompanied with any degree of solid and permanent rights more or less as an anomaly, and has often attempted to bring it to the level of the farming system as in England.

That it was thus that while in 1793 that generous and noble-minded Governor-General Lord Cornwallis found the system of middle holding in the most flourishing state, and their rights and status so high as to find it necessary to recognise them as actual proprietors in many cases, just in the next year 1794 A. D. a Regulation was passed by which the further growth of the system was arbitrarily prohibited, by which in fact a fatal blow was given to the rights of middlemen as a class.

That it is not to complain to Your Excellency of old acts of injustice only that Your Excellency's memorialists now approach Your Excellency. That such is the force of natural justice and of deep-rooted customs that the Legislature found it necessary in the years 1805, 1812, and 1819 to retrace their steps from the above-mentioned unjust and arbitrary direction and to take away the bar under which the middleman as a class had been placed by prohibitory provisions such as of Regulation XLIV of 1794.

That notwithstanding whatever injustice the Legislature may have at times done to the middlemen class, the assurance by Government to enact such regulations in future as the Government may think necessary for the protection and welfare of the dependent talukdars, yet stands in the Statute Book, *viz.*, in section 8 of Regulation 1 of 1793.

That Your Excellency's memorialists will now enumerate the particulars in respect of which Your Excellency's memorialists feel aggrieved with reference to the provisions of the Bengal Tenancy Bill.

(*a*) Section 51 of Regulation 1793 provides that, except in certain cases, the rent of a middle tenure shall not be enhanced. By this the onus was thrown on the zemindar to make out any case in which he claimed the right of enhancing the rent of a middle tenure, that the case came within any of the exceptions.

The Bill, however, reproduces the above section by limiting its operation to tenures held from the time of the Permanent Settlement. Your Excellency's memorialists humbly say that this would seriously prejudice the interests of the class to which your memorialists belong.

(*b*) The precedents of the High Court make it open to a tenant to plead limitation in cases in which the landlord denies the rights of the tenants. Besides, it is only just that if a man can acquire absolute proprietary rights by virtue of his possessing any land for 12 years, a middleman who has held lands for 12 years should have at best the right of continuing to hold them on his paying a fair and equitable rent. In the case of a cultivating ryot, such a right is recognised. Your Excellency's memorialists pray that the Bill should have in it a clause inserted to the effect that when an intermediate tenure has been held for more than 12 years, the holder shall not be liable to ejectment if he is willing to pay a fair and equitable rent.

(*c*) Where the rent of an intermediate tenure is enhanceable, neither the present law nor the Bill provides for any reasonable and just rule to regulate the mode and extent of the enhancement. Your Excellency's memorialists pray that the Legislature should lay down a rule to the effect that the rent of an intermediate tenure shall not be enhanced on a higher ratio than that in which the nett assets of the tenure have increased as compared with the former assets.

(*d*) The minimum of profits to be left to the middlemen holders is fixed at 10 per cent. of the nett proceeds. This is too low a minimum and is by no means just and fair. Your Excellency's memorialists pray that the minimum should be fixed at 25 per cent. of the nett proceeds, and that in the exceptional cases mentioned in the Bill the minimum should be 50 per cent. of the nett proceeds.

Your Excellency's memorialists would, in conclusion, humbly say that they may have again to approach Your Excellency with further representations. They earnestly pray that Your Excellency's Government will listen to their grievances as above, and will graciously amend the Bill so as to give effect to Your Excellency's memorialists' prayer.

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No. 749—9-35R., dated 31st October, 1884.

Endorsement by Under-Secretary to Government of India, Revenue and Agricultural Department.

Transferred to the Legislative Department for disposal, in continuation of the endorsement from this Office, No. 491, dated 23rd July 1884.

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No. 283M., dated 8th September, 1884.

From—N. S. ALEXANDER, Esq., Commissioner, Dacca Division,

To—The Secretary to the Government of Bengal.

With reference to your memorandum No. 902T.—R., dated 24th June last, forwarding for report a petition from the disaffected raiyats of the estate of the late Babu Dwarkanath Roy Chaudhri, complaining of the oppressions committed upon them, I have the honor to submit herewith copy of a letter No. 26T., dated 19th ultimo, from the Collector of Mymensingh, and to refer you to paragraphs 5 and 6 of my letter No. 51M., dated 28th April last, on which the Government Resolution of 21st June 1884 was passed.

2. It appears to me that, unless Bindu Bashini Chaudhrani agrees to the terms settled by Mr. Glazier, it will be best for the Court of Wards to take charge of the estate in the interests of the minor proprietors. Little else can be done until some such law as the new Tenancy Bill is passed. Such cases as these and that of pargana Mymensingh clearly show the necessity for the early passing of some enactment to enable the authorities to deal satisfactorily with them.

3. With reference to the petition of the raiyats of pargana Attia, zillah Mymensingh, received with your memorandum, one exactly similar was received with your No. 550-237L.—R., dated 9th February 1884, and replied to by me in this office letter No. 616M., dated 6th March last.

4. The papers received with your memorandum under reply are herewith returned.

No. 26T., dated 19th August, 1884.

From—E. G. GLAZIER, Esq., Collector, Mymensingh,

To—The Commissioner, Dacca Division.

In reply to your No. 235M., dated 9th instant, I have the honour to report on the subject of the petition of the raiyats of Bindu Bashini Chaudhrani.

2. Mr. Waller, in his letter No. 114, dated 16th April last, has already referred to the circumstances of this estate in paragraphs 22 to 26, and it is not necessary for me to repeat what he has said. In his 25th paragraph he has shown how, by excessive enhancement, the rents have been raised from Rs. 40,000 to Rs. 1,50,000, or nearly fourfold in the course of a few years.

3. On leaving the Rent Bill Conference at Dacca, I went round by Tangail with a view to effect, if possible, a settlement between the zemindar and her raiyats. I visited the lady at Soutosh, and talked with her about the matter, and she agreed to abide by any decision I might come to with the raiyats. On the 11th instant I held a mass meeting of the raiyats at Pingnah; they came from all the disaffected villages, and there must have been about 3,000 present. They told me that the rents of the kabuliyats of 1286 had not been collected in full; that the late zemindar had taken these documents on the understanding that the full rates were not to be enforced, and he had not done so; but that, on his death, the widow tried to collect rents at the further enhanced rates of the kabuliyats of 1289, and that consequently the last instalment of the rents of 1288, and the whole of those of 1289, 1290, and the current year remained unpaid. They said they were willing to pay at the rates of 1285, or at the rates of neighbouring villages belonging to other zemindars. After some discussion they agreed to pay an increase of eight annas in the rupee on the rates of 1285 to cover all the cesses they had been in the habit of paying. They also agreed to pay all the arrears in instalments extending over three years. They gave me a written statement containing these terms, signed by a number of their chief men representing all their villages. As this enhancement would, according to Mr. Waller's calculation, give a rental of Rs. 1,05,000, I consider the settlement would be an equitable one.

4. Mr. Donough, the nominal manager of the zemindar and the chief amla were present and agreed to the conditions on behalf of their employer; but afterwards they said they must go and consult her again, as the reduction was more than she had anticipated. I have heard from Mr. Donough since that he had not been able to see the Chaudhrani, as her children were ill, and the matter remains at present in abeyance.

5. I have looked carefully into the criminal cases between Bindu Bashini and the raiyats, as already reported in my No. 13, dated 9th instant. The latter have complained chiefly of being carried off by the zemindars' *lattials* and confined. One man, Hari Nath Chong, said to have been carried off in March 1883, has never been found. The police reported the case false; but it was, after an enquiry by a Magistrate, declared to be true. No one has yet been tried for the original abduction, and I have now ordered this to be done. The police reported another case of confinement (of May last) to be false. The District Superintendent, who re-investigated it locally, reported it to be true, and it will now come under judicial enquiry. In still a third case of confinement, which occurred in March last, one man was convicted by the Deputy Magistrate of Tangail on the 30th July, and sentenced to three months' imprisonment.

6. The only serious case against the raiyats was tried at Jamalpore, as the occurrence took place on the borders of the two sub-divisions. The special police entertained at the cost of the zemindar and some of the thana force tried to arrest a body of raiyats who were assembled to make a levy for the expenses of their combination. The police were driven off and hustled, and one of the zemindar's men was hit. The case was a good deal exaggerated. Over a hundred were identified as having taken part in the riot; 43 were sent up for trial; the Sub-divisional Officer convicted 25, and the Judge on appeal sustained the conviction in the case of ten. The sentences were from eight months' to one year's imprisonment. I have looked through the records in concert with the present Sub-divisional Officer of Jamalpore, and there is probably a case against two others still at large.

7. The special police—three head-constables and 12 constables—entertained since last January at the cost of the zemindar, and distributed through the villages, have doubtless been a constant source of irritation to the raiyats, and have clearly not prevented oppression by the zemindar. I removed them when at the spot on the 11th instant, as the District Superintendent reported that he did not anticipate any further breach of the peace. The thana police should be able to cope with anything that occurs, and the presence of small driblets of police in the villages seems rather provocative of breaches of the peace than otherwise.

8. This case would be one to be brought under the operations of the settlement rules of the new law if it had been in force, and, I may add, shows the necessity of the provision which we adopted at the Dacca Conference, to the effect that when a settlement of rents is in progress the Collector should have power to take over the management of the estate and to retain it as long as he judged necessary. The zemindar might otherwise ignore the whole proceeding. It is one thing to make a settlement and quite another to ensure its working. But if the Collector

had charge of the estate for a time, not only would his work of settlement be easier, but the arrangements made would have some chance of permanency.

9. Whether the estate should be brought under the Court of Wards is the subject of separate correspondence. I need only add that if the agreement I have striven to bring about can be carried out, there seems no immediate necessity for doing so, but if it fails, there are only two alternatives—either to bring the estate under the court at once, or to wait for the new law.

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No. 2234T—R., dated 11th October, 1884.

Endorsement by Officiating Under-Secretary to Government of Bengal.

Copy, with copy of the enclosure, submitted to the Secretary to the Government of India in the Revenue and Agricultural Department for information, in continuation of Mr. MacDonnell's letter No. 866T.—R., dated 21st June 1884.

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No. 2759, dated Calcutta, the 3rd November 1884.

From—C. S. Bayley, Esq., Officiating Registrar, High Court,

To—The Secretary to the Government of India, Legislative Department.

In continuation of my letter No. 2611, dated the 15th September, 1884, I am directed to forward, for the consideration and orders of His Excellency the Governor General in Council the enclosed printed minute by the Hon'ble Mr. Justice Tottenham on the Bengal Tenancy Bill.

2. Seventy-nine spare copies of the minute are forwarded separately.

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*Minute by the Hon'ble Mr. Justice L. R. Tottenham, dated 18th October 1884.*

Until the vacation I was unable to find time for the study of the provisions of this Bill with a view to offering the Government of India any remarks upon the subject in answer to the invitation contained in the Secretary's letter No. 785 of the 5th of May last. At this late period I should hesitate to trouble the Government with any observations, none of which probably will be new to the Council, were it not that I feel that as many as possible of the Judges of this Court should express their opinions, whether held in common with numerous other persons or peculiar to themselves individually.

2. The only Judge who, as far as I am aware, has submitted to Government any detailed criticism of the Bill is Mr. Justice Field in his minute dated the 11th of September. As I entirely agree in many of his comments on particular sections of the Bill, while not assenting to others, I propose for the sake of brevity, and to avoid repetition, to state in order the paragraphs of his minute dealing with sections of the Bill in which I concur. As to some of the other sections I think his remarks are based on misconception of what the Bill intends, and as to others, while not considering it necessary to express assent to his observations, it does not follow that I dissent from them.

3. I would endorse Mr. Justice Field's remarks in following portions of his minute :—

The first 5½ lines of para. 2.
The last 3 lines of para. 4.
The substance of para. 5, as to the imperfect definition of "Tenure-holder."
Paras. 19 and 20.
Para. 23 as to clauses *(a)* (*d*) of Section 31, and as to clause *(f)* in regard the limit proposed to be put upon the right of transfer of a right of occupancy. But I should prefer to have the right made non-transferable at all at the pleasure of the raiyat.
Para. 25 as to allowing the zemindar a right of pre-emption in the case of a gift to a person other than the donor's heir, and as to sub-section 6 of section 31.
Para. 28.
" 29.
" 30.
" 33 as to the substitution of staple "*food*-crops" for "staple crops" in clause (*b*), section 43,
" 36.
" 39.
" 40.
" 43.
" 46.
" 51.
" 59.
" 64.
" 80.
" 88.
" 90.
" 92 I would have no presumption on either one side or the other.
" 96.
" 107 First part.
" 113.

4. The criticisms in these paragraphs are chiefly directed to the wording of the Bill; and I think they usefully indicate particulars in which that wording may be improved, while they do not generally question the principles of the Bill. Assuming for the present these principles to be correct, I would offer one or two other suggestions which I think might usefully be adopted.

5. I do not understand, as seems to be apprehended by Sir R. Garth and Mr. Justice Field, that it is intended to exclude from the operation of the proposed Act tenants on lands belonging to, or under the management of, the Government, so far at least as their legal status is concerned. I gather indeed from the contemplated repeal of Act VIII of 1879 of the Bengal Council that it is intended, as regards the important subject of enhancement, to place Government in the same position as other landlords: but if there is, as Mr. Justice Field opines, anything in the definition of "Estate" in section 3, which makes it doubtful whether the Bill is intended to apply to Government estates, this doubt should be removed by the amendment of the definition. The Government still retains to itself a far more advantageous position than that of other landlords in respect of realising rents by means of the Public Demands Act, VII (B. C.) of 1880.

6. It seems obvious from what both Sir R. Garth and Mr. Justice Field have written that some better definition of tenure-holder must be devised; and I hope that in so doing the Council will see its way to laying down some clear distinction between a tenure-holder and a raiyat. I admit the difficulty of framing satisfactory definitions; but it is one which should be dealt with by the Legislature, and not merely shifted on to the Courts by referring them to supposed "local customs," the present existence of which is undefined; but the future invention of which will be as multitudinous and various as the exigencies which demand them.

7. In section 7 and many others throughout the Bill there occurs the expression "fair and equitable." The two epithets surely mean the same thing in all these sections: but if the two words are enacted together we shall have acute Pleaders and Munsifs proving that what is "fair" is not "equitable" and *vice versâ*.

8. Amongst the incidents of permanent tenures referred to in Section 11, I should like one to be that they may be relinquished; and that the Bill should contain provision for their holders giving them up, if so minded. It would be a new incident certainly, but the Bill contemplates so many innovations that novelty can hardly be regarded by the Council as an objection.

9. Section 13 appears to me to be superfluous, the very nature of a patni tenure implying the power to let the land comprised in it.

10. In the last line of sub-section 2, section 16, the sense seems to require that after the word "cause" should be inserted "to the contrary," or words to that effect.

11. I do not understand the principle upon which the penalty of fine is imposed under section 22 (2). By whom is it to be adjudged and levied? and for whose benefit?

12. A raiyat holding at a fixed rent is really what has hitherto been known as an istamrari mocurraridar. Would it not be as well to recognize him as a tenure-holder in all respects, and not have to enquire after local custom in determining whether those who hold under him can acquire a right of occupancy.

13. As regards the right of occupancy, I think it should be incapable of being acquired in respect of land in regard to which the tenant has a right only to the natural produce of it, *e. g.*, the right to cut grass or to turn in cattle to graze. A case recently came before me in which a Munsiff and a Subordinate Judge had both held that a person to whom this grass right had been let for more than 12 years had acquired a right of occupancy in the land, notwithstanding that by the terms of his written agreement it was clear that he had no right at all in the land itself.

14. I am very strongly impressed with the injustice exposed by Sir R. Garth and Mr. Justice Field of the presumption created by section 26 (2).

15. I think too that the right of occupancy as to land held by a raiyat should not be presumed to extend to all land held by him in the same estate, which may comprise several pergunnahs. If he be given a right of occupancy in all that he may hold in one *village*, there is no reason for granting him further indulgence at the expense of the proprietor.

16. As to the transferability of the right of occupancy, I entirely agree with those who are opposed to its recognition by the Bill. It was not an incident of the right, as far as I can make out, at the time of the permanent settlement: and I am convinced that it is a boon that is likely to do more harm than good to the raiyat, while its recognition may work great mischief and annoyance to the zemindar. Its justification seems to rest chiefly upon the principle, which this Bill very largely assumes, that the right of the raiyat is equal or superior to that of the zemindar; and that consequently he has as good a right as the zemindar to alienate the land of the estate. It seems to me that this principle is not a true one, and that the right

of the raiyat is limited to holding it as a tenant so long as he pays his rent and uses the land in a proper manner.

17. On the other hand, I think the occupancy ryot should be subject to ejectment for non-payment of rent. It should only be by suit, and such conditions should be attached to the incident as would protect the raiyat from undeserved hardship. But there are many cases in which the fear of ejectment should, I think, be retained. Most officers who have served in Lower Bengal are familiar with combinations of ryots to withhold their rents though well able to pay them, and in such cases I think the penalty of ejectment is fully deserved, and should be left in the hands of the zemindar to be applied through the Court.

18. Another matter which I think should be provided for in the Bill is the repudiation by a tenant of his landlord's title. Judicial decisions have established the tenant's liability to be ejected at the landlord's suit under such circumstances, and it seems to me that the law should either affirm or negative this principle.

19. The only observation which I wish to make on the subject of enhancement of rent is that I do not appreciate the justice of limiting the landlord to a certain percentage of the existing rent by way of enhancement, if the facts which entitle him to enhanced rent entitle him to more than that percentage. Suppose a ryot is paying less than half the prevailing rate, I do not see why the enhancement should not extend to that rate by the progressive steps contemplated in section 49.

20. As to commutation of rent in kind to a money rent, I am of opinion that, unless both landlord and tenant wish for it, the Collector should have no power to make it. Sub-section 6 of section 58 gives the officer power to refuse the application if opposed: but the earlier part of the section makes no provision for informing one party of the application having been made, but simply empowers the officer, upon the application being made, to determine the sum to be paid and to make order accordingly. This is probably an oversight.

21. Referring to section 59, I am of opinion that if it is necessary to interfere with the landlord's right to get rid of a non-occupancy ryot on the expiry of his lease, there is no sufficient ground for requiring him to give six months' notice; three months' notice would be ample. The provision that a suit for ejectment shall not be instituted after six months from the expiration of the term seems to indicate that, should the landlord fail to bring a suit to eject the ryot, who has had, say, a three years' lease, within six months from the expiry of that lease, the raiyat thereby acquires an immediate right of occupancy, for if he cannot be displaced he can stay as long as he likes. The zemindars have, I think, a right to be protected against such a contingency.

22. Sub-section 7 of section 60 unduly facilitates the acquisition of a right of occupancy against the will of the proprietor of the land, and is therefore to my mind objectionable. Indeed the whole Chapter VI goes far to cut away the proprietor's power to do what he likes with his own land.

23. If an under-raiyat, by the operation of some local custom now supposed to exist or hereafter to be invented, acquires a right of occupancy, is it to hold good only as against his immediate lessor or also as against all superior holders, and to be transferable and subject to all the incidents of its parent occupancy right?

24. I deprecate the interference of Government in such a matter as the fixing of rent-days as between landlords and tenants, contemplated in section 67. In the absence of specific agreement I would simply direct the court to assume that the rent is payable in quarterly or half-yearly instalments as may seem best to the Legislature.

25. I would strike out sub-section 3 of section 72.

26. It is fair that a raiyat ejected from his holding should receive any compensation to which he is equitably entitled for improvements made by himself, or any person from whom he has inherited the holding; but if he himself acquired the holding by sale in execution of a decree, which will sometimes be the case if the raiyat's right is made transferable, why should he receive compensation for improvements made by his predecessor in title? (section 93).

27. Sub-section 2 of section 94 seems somewhat officious, unless it be intended that, except by special enactment, the landlord and tenant may not settle any question amicably between themselves.

28. Two years seems to me an excessively long period to be allowed to a raiyat who has ostensibly abandoned his holding for bringing a suit to recover possession. I think that a condition precedent to the hearing of any such suit should be the deposit of the rent due for the period during which the raiyat has ceased to pay. On what sort of ground is it intended that he should get a decree for possession?

29. In the chapter on managers, it is provided in section 107 that a manager shall receive remuneration by salary or otherwise. I think this should be dispensed with where a co-owner is appointed manager. He will probably get advantages from the position which will render salary no object.

30. With reference to sections 129 and 130, I should be inclined to make the Commissioner's order final as to the entries in the table of rates, inasmuch as the local officers must possess more knowledge of local rates than will be available in the offices of the Board of Revenue, or of the Bengal Secretariat.

31. As regards the proposed record of a proprietor's private lands, I am of opinion that, unless the proprietor desires to have it made, there should be no authority vested in the Government or the Collector to interfere in the matter.

32. In the chapter on Judicial Procedure I should like to see provision made for the case in which the raiyat pleads that the rent claimed was payable to a third party, and has been paid to him. Section 164 does not meet this case, which will therefore frequently arise.

33. The proviso to section 168 gives the District Judge power now vested in the High Court under section 622 of the Civil Procedure. I think it should be explained that to make a mistake in law is not an illegal act. Applications are constantly being made to the High Court for relief under Section 622 in respect of errors of law in legal decisions.

34. When the Court makes a decree under section 173 declaring the liability of the defendant to pay a fair rent for the land in his possession, is the decree to have retrospective effect, and for how far back? This matter ought to be settled.

35. No provision is made for the realization of rent separately by different co-sharers, nor as to the effect of sales in execution of decrees for shares of the rent. Some Members of the Council must be aware that there are very many properties in Bengal held by two or more co-sharers, who have for a long period peaceably and, with the assent of the tenants, separately collected their undisputed shares of the rent, and have, when necessary, brought suits and obtained decrees for such shares. In such cases the provisions of section 102 as to Managers do not apply, nor do I suppose that the legislature intends to put a stop to long established and unobjectionable practice. Suits therefore will continue to lie in many cases for fractional shares of rent, and provision ought to be made for the execution of decrees to be obtained in such suits.

36. Before concluding I think it right to express very briefly my opinion of some of the leading principles of the Bill. That it goes far beyond the scope of reproducing the relation of landlord and tenant as it existed at the time of the permanent settlement is not to my mind a matter for objection. But I do think it objectionable that the mutual rights of the two should be arbitrarily changed to the advantage of one side and the detriment of the other I think that the Bill tends in this direction by ignoring to a considerable extent the zemindar's status as proprietor; and by unduly exalting the status of the tenant into what really becomes that of a joint-proprietor with the larger interest. The impossibility of the zemindar's retaining any portion of his lands, except his khamar, free from permanent tenures and occupancy-rights, and the arbitrary restrictions put upon his admitted right to enhance rents under certain circumstances, as well as the multitudinous occasions for interference with his affairs by the Local Government or the Revenue Officers, combine to lower his position very seriously, and I think unnecessarily.

37. I think the power of summary distraint should not be taken from the landlord. In some parts of the country it is the only means of securing the rent, and the plan now proposed to be substituted is more tedious, uncertain, and costly.

38. I am strongly averse to the prohibition of free contract between landlord and tenant unless there can be shown better reason for it than I have yet seen. What is true, or may be true, of Behar is not true of Bengal; and to make one Act apply equally to both is hardly possible. The Bengali raiyat as a rule is fully competent to take care of his own interests, and he is less likely now to be victimized than he was in former days when there was less education and fewer local lawyers.

39. Finally I would say that, while there is much in the Bill that promises to be useful, it appears to me to be in other respects unpractical, as tending to complicate, instead of simplify and secure the relation between landlord and tenant; to foster litigation and bring down the interference of the authorities, rather than promote peace and mutual confidence between the two classes, while impartially maintaining the respective rights of each.

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No. 2943, dated 20th November 1884.

From—The Officiating Registrar, High Court, Calcutta,

To—The Secretary to the Government of India, LEGISLATIVE DEPARTMENT.

In continuation of my letter No. 2759, dated the 3rd instant, I am directed to forward, for the consideration and orders of His Excellency the Governor General in Council, the enclosed printed Minute recorded by the Honourable Mr. Justice Cunningham on the Bengal Tenancy Bill.

2. Seventy-nine spare copies of the Minute are also forwarded herewith.

*Minute by the Hon'ble Mr.* JUSTICE CUNNINGHAM.

**Concurrence of Secretary of State and the Government of India as to principles of the Bill.**—The facts which necessitate legislation on the law of landlord and tenant in Bengal, the principles by which legislation on the subject must be governed, and the general lines in which it should be framed, were, as long ago as December 1882, agreed upon by the Secretary of State and the Government of India.* Accordingly, in inviting an expression of opinion as to the Bill framed on the lines thus laid down, the Government of India cannot be understood as intending to re-open controverted points, upon which, after years of enquiry and elaborate discussion, an agreement had been arrived at, but rather as inviting consideration as to the degree in which the Bill is calculated to effect the objects which the Legislature admittedly had in view.

* The Government of India, to Secretary of State, 21st March 1882.
Secretary of State to Government of India, 17th August 1882.
Secretary of State to Government of India, 11th January 1883.

**2. Opposition still to be encountered.**—But it is obvious that a strenuous effort will still be made by those who consider their interests endangered, and by the advocates of those interests, to obstruct the passing of any measure which, in any degree, embodies the principles which these high authorities have, concurrently, sanctioned for the forthcoming legislation. The opposition is fortified by high authority; the Bill is denounced, not only by interested partizans, but by officials of eminent position, as unjust, impolitic, inconsistent with the good faith which the British Government is bound to maintain, as involving ruin to the zemindars, and scarcely less serious injury to the ryots. A powerful organization of resistance has been formed, and is actively at work in India and England. Numerous meetings have been held all over the Province. Numerous petitions have been submitted from influential quarters to the Government, the Secretary of State, and to Parliament. A controversy, so ardent and so prolonged, is necessarily unfavourable to calm thought or temperate language. Free recourse is had to every topic which can excite odium or appeal to prejudice. In the heat of argument assertions of the most unfounded character are confidently made; facts, for which the most unquestionable evidence exists, are recklessly denied; principles on which every political economist and every civilized Government have been long agreed are either tacitly ignored or boldly called in question. It is obvious that those who believe a measure of the character of the one in question to be expedient, and even necessary, must be prepared to defend it, *ab initio*, and for this purpose to reproduce facts and arguments which, it might have been supposed, had long ago done their work and been relegated, as historical curiosities, to the armoury of obsolete disputes. It may be worth while, accordingly, to recapitulate, in as concise a manner as may be, the problem with which we are confronted in Bengal, the facts which appear to be satisfactorily established with reference to it, and the principles which, unless the Government of India is to abandon not only its own carefully considered policy, but the precedent of every civilized Government and the axioms of every system of political economy, must govern its solution.

**3. Report of the Government of Bengal, 15th September 1884.**—In speaking of the Bill, I shall, as a rule, speak of the measure as modified by the proposals of the Bengal Government in its Report of 15th September 1884. That letter represents the conclusions at which the Lieutenant-Governor of the Province has, after a consideration of the opinions of the local officers best acquainted with the subject, arrived. Much stress has been laid by some of the opponents of the Bill on the circumstance that though there were repeated controversies as to matters of fact, no witnesses were examined before the Select Committee. It is worth while, accordingly, to notice the procedure which has been adopted on the present occasion for obtaining a knowledge of the facts of the case and an expression of opinion from all classes concerned. The Bill was first published in the *Calcutta* and vernacular Gazettes, and translations were made available to the public at a nominal price. The Board of Revenue, the Commissioners, District Officers, such Judicial Officers as had special acquaintance with the subject, were then addressed, as also were the various public bodies who are concerned in the discussion. A circular letter was then issued, directing the attention of the officers consulted to the chief points for enquiry and report. The District Officers were directed to make enquiries on all obscure points, to consult all those interested in the subject and willing to give advice, and then to meet their Commissioners and discuss with them the clauses of the Bill in the light of actual facts prevailing in each district. These instructions were carried out, and "conferences" were held in the various divisions, at which the local officials discussed the topics of the Bill from their own point of view. The Government of Bengal, with good reason as it would seem, regards the evidence and opinions thus collected as of the greatest value. Such a course appears to be in every way superior to the examination of witnesses before a Select Committee in Calcutta. Instead of a single inquiry, conducted by a Committee, the majority of whom entertained and had already avowed a decided opinion on one side of the controversy, the procedure followed provided for a number of local inquiries, conducted by officers whose views were, presumably, as favourable to the one side as the other; who knew the people whom they questioned and the quarters in which valuable information was most likely to be got; who had the advantage of comparing their own knowledge with that of neighbouring officials, and who could collate and discuss the evidence at leisure. No such body of weighty and well considered evidence could be got together by a Select Committee without an expenditure of time, money and labour, and a derangement of the administrative

machinery of the country, which would be quite inadmissible. The Government has, in its executive district officers an excellent machine for collecting information, and I believe the examination of witnesses before a Select Committee would be in every way less effectual in getting at really trustworthy facts or really well-considered opinions. The Government of Bengal says that the evidence "reflected impartially every shade of opinion," and that it is remarkable for the proof it affords of the necessity, not only of legislation, but of legislation in the general direction of the Bill, inasmuch as even those officers who are most opposed to the measure admit by their comments the necessity for improvement in the law. Now, which is more convincing, the opinion thus arrived at by the Lieutenant-Governor of the Province, or the vague and violent language of those who assure us that no change is expedient, and that the proposed law will be the ruin of the country? When the Government is solemnly warned against the proposed legislation as unjust, unnecessary and dangerous, and urged either to withdraw or materially modify it, the answer appears to be that an overwhelming majority of responsible witnesses agree that some change is imperatively necessary; that the necessity for change was felt almost immediately after the passing of Act X of 1859; that that Act has in many important particulars produced results the very opposite to those contemplated by its framers as regards the well-being of the ryot;* and that the evils thus produced can be met only by the exercise of the Government's right of interference on his behalf. Since the affairs and troubles in Pubna in 1873, the necessity has been admitted to be urgent.

* "The Bill is a real and earnest attempt to improve the position of the ryots of Bengal, and to open to them a prospect of freedom and independence, which they have not hitherto enjoyed, by clearly defining their rights, and by placing restrictions on the power of the Zemindars such as ought long ago to have been provided. This being so, I think that the Bill ought to pass into law." (Lord Canning in assenting to Act X of 1859, 29th April 1859.)

**4. Sir A. Eden's letter of 27th July 1881.**—All these conclusions were formally stated in the Report of the Rent Commission appointed by Lord Lytton in 1879, and in Sir A. Eden's letter of 27th July 1881, which it is greatly to be desired that those who deprecate legislation should consult. Have the general conclusions there set forth been confirmed or shaken by the information elicited during the last three years? It appears to me that it is impossible, having regard to the concurrent opinions of the persons most qualified to judge with information and insight, to doubt that some change is essential, and that the State is not only at liberty, but bound to interfere with the object of protecting the agricultural tenantry of Bengal from the natural and inevitable results which, in the absence of legislative protection, the circumstances of the Province must inevitably entail upon them.

**5. Secretary of State's letter to Government of India, 17th August 1882.**—This, as already observed, is no longer, so far as Indian officials are concerned, a mere matter of opinion, inasmuch as the Secretary of State has pronounced an authoritative decision that, "whatever may have been the former intentions of Lord Cornwallis, it is fully established that the reservations made at the time of the Permanent Settlement give the Government of India the full right of interposition for the amelioration of the condition of the Bengal peasantry," and that legislative interference is justified by the present circumstances of the country. We may take it, moreover, as laid down by the same high authority on the same occasion, that the object of the present legislation is "to settle the land-law of Bengal on a firmer, juster and more satisfactory basis; to keep the cultivation of the soil in the hands of a substantial peasantry, able to withstand the vicissitudes of seasons; and to promote the accumulation of wealth, the sound growth of credit and the progress of agricultural improvement."

**6. Circumstances of Bengal which justify legislation.**—This decision, however, is vehemently contested. The landlords and their advocates boldly assert their right "to do as they will with their own" as regards all tenants not at present enjoying legislative or customary protection, and denounce the proposal to increase that protection, or to afford it to any other class, as grossly unjust, a breach of faith, and revolutionary. It may be well, therefore, to glance at the facts necessary to support the propositions, *first*, that the special circumstances of large portions of Bengal are such as, if uncounteracted, to ensure the degradation and misery incidental to a redundant agricultural population crowding on the soil; and, *secondly*, that the Government has the right to interfere for their protection, and is bound to exercise that right.

**7. Local Extent of Bill.**—It should be premised that the Bill does not, unless hereafter specially extended, apply to the Orissa Division or to those portions of the Province known as the "Scheduled Districts," *viz.*, the Julpigori and Darjeeling districts, the Hill Tracts of Chittagong, the Sonthal Pergunnahs, the Chota Nagpore Division, and some other localities. Two only of the four Provinces which constitute the Lieutenant-Governorship of Bengal are affected, *viz.*, Bengal and Behar, and from these must further be excluded the wild district, lying between the two, known as the Sonthal Pergunnahs, the wild and mountainous Chittagong Hill Tracts on the extreme east of the Province, and the two East Himalayan districts. Bengal Proper contains 70,000 square miles, exclusive of 5,000 or 6,000 miles of unsurveyed and unreclaimed land in the Sunderbuns. Behar contains 44,000 square miles. The districts in these two Provinces to which the Act will not apply aggregate about 15,000 square miles, and contain a population of rather more than 2¼ millions. Orissa contains 9,000 square miles and Chota Nagpore 26,000. The result is that of the 150,000 square miles in Bengal, the Bill will apply to 100,000, and will not, unless specially extended, apply to 50,000.

The inhabitants of Bengal and Behar number 58¼ millions, or 84 per cent. of the entire population of the Province. The population immediately affected by the Bill will, accordingly, be about 76 millions.

**8. Dense population of Bengal.**—These two provinces constituting, as they do, the valleys and delta of several magnificent rivers, and enjoying a rich alluvial soil, a plentiful rainfall, an easily-raised crop, and a tropical climate, present conditions highly favourable to the multiplication of the human race, and the population is denser than any known in the agricultural districts of Europe. Bengal has a ratio of 505 to the square mile and Behar of 527. This ratio, however, is greatly exceeded in particular localities. In Behar, for instance, the Patna, Mozufferpore and Sarun districts show a ratio over 800 to the square mile, and the Durbhunga district 789. In Bengal, the Hooghly district shows 737 to the square mile; Howrah 1,130; the Jessore district has 682, and the 24-Pergunnahs 679; the Poona district has 710, and Rajshahye 566. Two districts in the Dacca Division show over 700 inhabitants. When we compare these figures with other agricultural countries, the contrast is remarkable Ireland has 181 inhabitants to the square mile, France 180, Italy 238, Prussia 185, Austria 175, Belgium and England, with their huge and urban populations and enormous non-agricultural resources, 480 and 485 respectively.

**9. Exclusively agricultural character of the population.**—The first fact, then, with which we are confronted is that we have to deal with a population of unexampled density. But this is not the only circumstance which has to be considered in the case of the inhabitants of Bengal, or which renders it, *a priori*, probable that interference on the part of the ruling power would be necessary in past times and will be necessary in future. There is, first, the character of the population, which may be said to be, as regards large portions of the Province, exclusively agricultural. There are no great manufacturing cities—indeed no cities at all in the European sense of the word—except Calcutta, Patna, Gya, Bhagulpore, Dacca, and two or three more. In the whole Province there are only 11 cities with more than 50,000 inhabitants, and only 33 with more than 20,000. More than half of all towns and villages contain less than 200 inhabitants, while 87 per cent. are "little hamlets with less than 500 inhabitants." The entire urban population is 3¼ millions, about 5¼ per cent. of the whole, an exceptionally low proportion, as compared with 66 per cent. in England and Wales, 31 per cent. in France 22 per cent. in America, and even 17 per cent. in Bombay, 9 per cent. in Madras and the North-Western Provinces, and 11 per cent. in the Punjab. Of 34½ millions of male, 15¾ millions were recorded in the census of 1882 as "agricultural," against 2½ millions "manufacturing and industrial;" and it is certain that the class designated "indefinite and non-productive," which numbers 15¾ millions, contains large numbers who, in one way or another, look to the soil for support. There is no great manufacturing industry. The exports of Bengal are all either raw produce or agricultural produce, very slightly manipulated by the producing agriculturists. Again, there is the greatest reluctance to a change of residence: while in some parts of the province the population is 869 to the square mile, and there is practically no waste land, so that the competition for agricultural holdings is intense; in others there are still great tracts untilled simply for want of population, and the competition is not of tenants for land, but of landlords for tenants. The increase of railway communication will, no doubt, in course of time, affect this state of things; but it may be doubted whether the aversion of the agricultural classes to leave their abodes will be, for many years to come, modified in any appreciable degree.

**10. Increase of population.**—The population, notwithstanding a high normal mortality and occasional severe epidemics, shows a steady increase. The 62 millions of inhabitants in 1872 had grown into 69¼ millions in 1881, an increase more than 10 per cent. in 9 years. This rate will, no doubt, tend to rather increase than diminish. The absolute peace, the increased power of counteracting the mortality of famines which canals and railways afford, the larger extent to which several of the other great causes of mortality are being brought within control, all tend in the direction of higher ratio of increase. On the other hand, not only are there few of the prudential checks or habits which in some countries tend to arrest the growth of an agricultural population, but the social customs and religious belief of large classes necessitate early marriages, and so encourage reproduction at an age scarcely beyond childhood. The entire female population is married before the 20th year, and more than 10 per cent. before the 10th year. The same causes conduce to the habit of the entire family living on, if possible, on the holding, and in the ancestral dwelling-house, and to the common enjoyment of the holding by all the members.

**11. Increasing severity of the struggle for life.**—Life, there is good reason to believe, is gradually becoming a harder struggle to large classes of the community. Prices have increased, and are increasing. The price of rice has doubled in the course of the last century; that of wheat has increased in a still higher ratio. At Patna two independent sets of statistics established the result that the price of rice has risen within the last 15 years between 21 and 23 per cent. This state of things suggests increased wealth to those who have produce to sell, increased difficulty of life to those who have to buy. The existence of some pressure is favoured by a calculation made by Sir E. Baring when Financial Member of Council, *viz.*, that the crop yield of Bengal bears a lower proportion to the population than that of any part of India except the North-Western Provinces and Oudh, *viz.*, Rs. 15-9 per head, as against Rs. 21 per head in the

Central Provinces, Rs. 22-4 per head in Bombay, Rs. 19 per head in Madras, and Rs. 18-5 per head in the Punjab. Making all allowance for the considerations that would modify this estimate (as, *e.g.*, that the crop may not mean the entire agricultural outcome, and that there are non-agricultural sources of wealth), the fact does still tend in the direction of proving that there is less agricultural wealth in Bengal than elsewhere, and that the pressure on the soil is greater.

**12. Different interests in the soil. First that of the State.**—Such being the main economic conditions of the province, we have next to consider the mode in which the proprietors and possessors' interests in the soil are distributed. The first interest is that of the Government, which by the immemorial and unquestioned law of India, is entitled, as the Ruling Power, to a definite portion of the profits of the soil. Considerable changes have, since the declaration of the Permanent Settlement in 1793, from various causes, taken place both in the amount of revenue and the size and number of estates. Many of the large zemindaries were broken up in the years immediately succeeding that declaration, owing to the failure of the zemindars to pay the Government demand. From the same cause a considerable number of estates have subsequently reverted to Government. Another increase in the land revenue has arisen from the transfer to the Government of certain police duties, to which, under the Permanent Settlement, the zemindars were liable. Escheats and the resumption of invalid rent-free tenures have still further enlarged the Government revenue-roll. In 1882-83 the revenue of those portions of the Province, in which the Permanent Settlement was originally carried out, stood at Rs. 3,62,00,000.

**13. Owners of Estates. Land Revenue of Bengal.**—The owners of the 110,456 estates in Bengal Proper and Behar, by whom the largest portion of this revenue is paid, are classified as follows:—

97,695 small estates under 500 acres.
12,304 estates from 500 to 20,000 acres.
457 estates above 20,000 acres.

In other words, less than ½ per cent. are large properties of over 20,000 acres, 11 per cent. range between 500 and 20,000 acres, and 88½ per cent. are petty properties of less than 500 acres. Among the large estates are some of the size of a small principality; one estate, for instance, in Chumparun consists of 1,187,000 acres, more than half the revenue-paying land of the district. It is noticeable that in Behar (the Patna Division and Bhagulpore) the tendency to sub-division has of late years been very pronounced. The 25,800 estates in the Patna Division of 1862 had grown into 49,000 in 1882. A large increase has also taken place in Bhagulpore. Of the entire number of estates, no less than 2,706, with a revenue of nearly 20 lakhs, are the exclusive property of Government. Of these, some are under the direct management of Government, some are let out on farming leases. Besides these, the Government has under direct management various estates owing to the recusancy of the owners. Altogether there were in 1882-83, 1,061 estates, with a revenue of 26 lakhs, under direct Government control.

**14. Rental of Bengal, 17 millions sterling.**—The 3½ millions of revenue thus paid to Government is, of course, but a fraction of the entire payments made from the soil. In Bengal there are no agricultural statistics, and nothing accurate is known of the area or crops. The area under cultivation, however, has been estimated at about 54 or 55 millions of acres, of which 48 millions may be regarded as under food-crops, and six or seven millions under non-food-crops. The Famine Commission estimating the average yield to be 11 bushels per acre, the food-crop to be worth £5 per ton, and the non-food acreage at £3 per acre, estimated the crop outcome at 103 millions sterling. In addition to this, there would be the outcome of dairies, gardens, forests, &c., which might perhaps be taken at one-third of the crop value, or, say, 30 millions. The Government* estimate the average yield of rice at 12 to 15 maunds (984 to 1,230lbs.) of raw grain, or 10 or 12 maunds of husked rice per acre, a somewhat larger outturn than the figures available to the Famine Commission appeared to justify. Assuming the average outcome to be half a ton (1,120lbs. per acre), this would give a gross outturn of 27 millions of tons, worth, at £5 per ton, 135 millions sterling. Out of this a population of 70 millions has to be supported, the land to be sown for the next year's crop, and the export trade, now very considerable, to be maintained, and the rent to be paid. Assuming the food of 70 millions to exhaust 50,000 tons per diem, this would account for 18 millions of tons in the course of the year, leaving only 9 millions of tons for all the other purposes specified. Suppose 9 millions of tons to be worth 45 millions sterling, and the expenses of agriculture, the wear and tear of life, clothing and luxuries and wastage to cost 6*s.* 8*d.* per head of the population, this would account for 23 millions sterling, leaving a margin of 22 millions for rent.

* Administration Report for 1882-83, page 4.

All estimates as to the agricultural outcome are, in the present defective condition of statistics in Bengal, to a large extent conjectural. The estimate above given is, however, not without corroboration. We have some figures which are more or less trustworthy as to the actual rental. The rental of the landlords in almost the whole of Bengal, as calculated from the first Road Cess statistics nearly 10 years ago, was between 13 and 14 millions sterling. The valuations were, in many instances, defective; and re-valuations, now in progress but not yet complete, indicate that the amount paid to landlords of one sort or another in Bengal does

not, at any rate, fall short of 17 millions sterling. There is good reason to believe that the actual payment, direct and indirect, by the occupants of the soil is considerably in excess of this sum. Some authorities have estimated it as high as 25 or 30 millions of sterling.

**15. Effect on the Public Revenue.**—The effect of this state of things on the public revenue is, of course, very marked. Sir E. Baring calculated that, whereas in a completely ryotwari province, such as Bombay, 88 per cent. of the total payment made from the land finds its way to the treasury; and in a province, where four-fifths are ryotwari, such as Madras, 69 per cent., in Bengal only one-third of the payments from the soil reaches the State. The figures given above appear to show that this calculation fell far short of the truth, and that the rent-receiving class in Bengal pays only about one-sixth of its receipts by way of revenue to the State. This result would not, of course, justify the repudiation of the terms of the Permanent Settlement; but it is sometimes urged on behalf of the land-owners of Bengal that their zealous and generous exertions have earned the gratitude of the State, and constitute a claim to exceptional treatment. To such pleas *ad miseri cordiam*, a pertinent reply is supplied by the fact that, as matters now stand, they receive five-sixths of the net outcome of the soil for doing nothing or next to nothing; while the Government receives one-sixth for all the expenses of administration, defence, maintenance of order, detection and punishment of crime, and general development. Under this last head attention should be called to the fact that more than a million of acres have been protected from famine and enormously increased in value by canal irrigation, and that the Province has now more than 1,200 miles of railway completed, besides a large number of schemes under construction. These improvements have, to a very large extent, been effected out of public resources towards which the land-owners have contributed nothing but the 3½ millions of revenue. Of late years they are liable for half of the local cesses, or, say, 18 lakhs, though cases not unfrequently come up, which show that the practice is for the tenant to pay his landlord's moiety as well as his own. Besides the East Indian and East Bengal lines, which have now been purchased by the State, 4½ millions sterling had, up to the close of 1882-83, been laid out on 570 miles of State Railways, and 6 millions had been spent on 640 miles of canals affording irrigation to 1,200,000 acres, at the expense of the general revenues of the country or the province. The net result of these canals, which, unquestionably, have largely increased the land-owner's rental, is an annual charge to the Province of 21 lakhs. There is a debit against the Railways of nearly 30 millions for guaranteed interest, incurred in the earlier years of railway enterprise, to which the Bengal lines have contributed an appreciable share. This has been paid by the general tax-payer.

**16. Position of the land-owning class.**—The position of the land-owning interest in Bengal, accordingly, is that the net rental available after payment of land revenue has risen from something between £300,000 and £400,000 (which it is estimated to have been at the time of the Permanent Settlement to something over 13½ millions sterling); that a large portion of this increase is due to the maintenance of peace and public order and the general prosperity of the Empire, and especially to the rise in the value of agricultural produce produced by increased facilities for trade—roads, railways, canals,—towards which improvements the zemindars must be deemed to have contributed nothing, because the yearly revenue fixed at the Permanent Settlement must be regarded as their contribution—a very inadequate one—towards the cost of the general expenses of the Empire and Province, irrespective of these undertakings. If, therefore, the State finds it necessary to exercise the power—which, under the Permanent Settlement, it is admitted by all to possess,—of interfering between landlord and tenant for the protection of the latter; and if this interference involves some restriction of the landlord's immediate profits, it may tend to allay the alarm, indignation and sympathy occasioned by the process if it is remembered that we are dealing with a class whose income has increased from causes to which it has but in a very small degree contributed, so as to be more than fifty times as large as it was when it was first settled by Government. It may also be serviceable, for the same purpose, to recall the undoubted historical fact that, whatever may have been the privileges accorded by the Mohammadan conquerer to the Bengal zemindars during the century and a half of efficient Moghul rule, those privileges at all times rested on the precarious tenure of the pleasure of an absolute sovereign, and were subject to the unquestioned right of the ruling power to demand whatever portion of the proceeds of the soil it pleased. For the last quarter of a century previous to the accession of the British, this absolute power had been used in the most violent, rapacious and oppressive manner by a series of Viceroys, with whom plunder was the chief and almost sole function of government. The land-owners were among the most conspicuous sufferers, and Warren Hastings' summary procedure fell far short of the precedents established by his predecessors. At the time of the Permanent Settlement, whatever claims to hereditary succession the zemindar may have established, his position was much more that of the official of an arbitrary Government than of a land-owner in the English sense of the word. His remuneration was the one-tenth of the revenue which it was his business to collect for the State: he was liable to fine, imprisonment, even corporal punishment. He could not enhance or eject. His duty was to "conciliate and encourage the ryots." This duty, in the disturbed years of the expiring Moghul Empire, he very imperfectly performed, as the British speedily discovered. In 1769 the President of Bengal appointed a commission for the purpose of ascertaining and fixing the amount which the zemindar received from the ryot "as his income or emolument." The Regulation of that year declared that "he had taken advantage of his position, had imposed illegal taxes, and had thus extended his claim and availed

himself of opportunities to lay his hands *on the revenues of Government and the property of the ryot*, where he had no foundation of right or color of pretence." This "property of the ryot," the Regulation announced, the Government intended to protect from further invasion. Nor was this view lost sight of in subsequent legislation. In 1790 Lord Cornwallis pointed out that, "while the zemindar's claim to a certain percentage of the rents of their estates had been admitted, *the right of Government to fix the amount of those rents at its own discretion had never been denied or disputed*;" and that, as zemindars had in numberless cases been dismissed for non-compliance with Government requirements, "*a more nugatory or delusive species of property could hardly exist.*" The view taken by the author of the Permanent Settlement was re-asserted 30 years later by the Board of Directors in the well-known passage of their despatch of 15th June 1819, pointing out the injurious consequences which had arisen to individual rights "from describing those, with whom the *Permanent Settlement was made, as the actual proprietors of the land*," and the payments by the ryots as rent instead of revenue—inaccuracies which, the Board said, had "introduced confusion into the whole system of tenures, and given a specious color to the pretensions of the zemindars in acting as if they were, in the ordinary sense of the word, proprietors, and as if the ryots had no permanent interest in the soil but what they derived from them." One practical proof of the narrow limits within which the zemindar's proprietary rights could be exercised, is that by Regulations of 1793, 1795 and 1803, he was prohibited from granting a lease for more than 10 years, and no lease was valid till it had been submitted to and approved by the revenue authorities. It is, of course, notorious that the view taken by some authorities of the zemindars' position placed their proprietary rights somewhat higher, and that particular phrases may be adduced in which their views found official expression. But the general tenor alike of the Regulations, the despatches of the Government and the Directors, and the Minutes in which Lord Cornwallis and other Indian Statesmen recorded their views is, to my mind, quite incontestably in favour of the view recorded by Lord Moira in 1819, that the Permanent Settlement was "founded on the principle that the ryot's payments were to be regarded, not as the mere payment of rent to an absolute proprietor, but an assessment payable to intermediate managers, possessing an hereditary and transferable property in the incidence of their management."

[1] Minute, 3rd February 1790. Sections 61 to 63.

**17. Tenure-holders.**—Under the proprietors come a large class of intermediate landlords, or tenure holders, estimated to be more than a million in number. In the majority of instances their income is a very small one. One return gives 620,000 of them as having a rental of less than £10 per annum. This class exemplifies the strong tendency in Bengal of the possessor of any interest in land to sub-let it rather than himself engage in the risks and costs of agriculture. It constitutes a structure built up by a sort of process of sub-infeudation, the possessor of the interest in each instance letting it out to some subordinate holder, who, in turn, lets it to another; this process of sub-letting being repeated often two, three, or four, and in some instances as many as thirteen, times.

**18. Ryots.**—Under the 150,000 proprietors' estates in Bengal, and 1,000,000 tenure-holders, come 10 millions of holders who are, or are supposed to be, in actual occupation of the soil. The great majority of them, no doubt, are so. Of the 10 millions, 9 millions pay less than Rs. 20 per annum, and of these 9 millions, more than 6 pay less than Rs. 5—a rental which may be taken to represent a holding of about two acres. There are, however, 25,000 ryots whose rental is over Rs. 100, and 120,000 whose rental is between Rs. 50 and Rs. 100. Among them are many who sub-let. In some instances there are ryots who hold many thousands of acres, and are really considerable landlords. At any rate, the tendency which has been at work in the classes above them is also here at work; and the "sub-ryots" constitute a class already numerous and certain to increase, and more in need of protection, probably, than any other.

**19. Occupancy ryots.**—A large proportion of the ryots, estimated at from 70 to 90 per cent., are in enjoyment of certain privileges as to fixity of tenure and limitation of rent, which vary in some particulars in different parts of the province, but which are known generally as "occupancy rights." The exact process by which these rights came into existence is a matter of dispute. There is no dispute that many of them are the representatives of the "khudkhast kadimi," or self-cultivating ryots, whose rights were so carefully provided for at the time of the Permanent Settlement. Another portion has acquired these rights by the rule introduced by Act X of 1859, which conferred occupancy rights in land as the result of 12 years' continuous residence as a ryot upon it. Other rights have grown up by local custom, which in some places allows of a still more rapid growth of occupancy right. There is a fierce controversy as to whether the privileges accorded at the Permanent Settlement were intended for all resident tenants, or only for a recognized class already in occupation. This will be considered hereafter; at present the fact with which we have to deal is that—partly from historical causes, partly from the natural desire to secure a tenant, partly from kindliness or indifference of landlords—a proportion estimated at from seven-tenths to nine-tenths of the ryots are in the enjoyment of privileges, amounting in some instances to absolute fixity of tenure at a given rent, in others to a rental enhanceable only on certain specified grounds: in all, to a right to remain on the soil, so long as the rent is paid; that these rights, originally not transferable, have become so by local custom in many, if not most, parts of Bengal, but not in Behar; that they descend from the father to the sons in like manner as other immoveable property; and that there is a generally recognized practice of sub-letting ryoti holdings.

**20. Condition of agricultural class in Behar.**—When we come to examine the condition of the population with more particularity, we find a very pronounced difference between the two provinces concerned. In Behar agrarian troubles have, on several occasions, brought the condition of the agricultural classes in that province under the consideration of the Government.

In 1866-67 disturbances rose in connection with the indigo cultivation in Tirhoot and Chumparun; the Commissioner of the Division reported that oppression and extortion were frequently practised on the ryots, and though it was resolved not to resort, at the moment, to legislation, Lord Lawrence, then Governor General, recorded his conviction that a law was required which would protect the ryot both from planters and zemindars. "I believe," he said—

"that it will be necessary for the Government, sooner or later, to interfere, and to pass a law which shall thoroughly protect the ryot and make him, what he is now only in name, a free man, a cultivator with the right to cultivate the land he holds, provided he pays a fair rent for it."

The subject was again brought under consideration in 1873, and in 1875 the Commissioner of the Division, writing of the prevalent scarcity, observed that there had been during 17 years five occasions, besides the present one, when a crop-failure, in some parts of the country, notwithstanding an excellent harvest in others, had resulted in the starvation of a certain part of the population. His explanation was that "not only is the cultivator left with an area barely sufficient to raise the food he requires for his family, but, in time of drought, he is short of food, as the yield is below his requirements." The same result was established by an official enquiry held in the following year. The cause of the inability of the Behar peasant to bear up against any vicissitude of season was, the Commissioners reported, that he had not, and could not by any possibility have any reserve on which to fall back.

"The whole conditions of agricultural industry then are such as to render it precarious. There is no sufficient certainty as to tenure. It is impossible for the population to fall back this year solely on accumulated reserves, whether of grain, of property, of money or credit. For the whole conditions of life are such as to preclude any sufficient accumulation of the kind The ryots cannot fall back on any credit fund like the tenant-right in other parts of Bengal, for practically, there is no such right available to offer in pledge. The people who plough and sow, and who ought to reap, have not a reasonable assurance as to the fruits of their industry."

**21. Views of Sir A. Eden and the Famine Commission as to Behar ryot.**—In 1877, Sir A. Eden again brought to the notice of Government the general and widespread prevalence of oppressive, lawless, and high-handed practices, and proposed a project of legislation on the cultivators' behalf. Further discussion and enquiry established the gravity and the extent of the illegalities and oppressions which had reduced the Behar peasantry to their low condition; and the Famine Commission, with whom the condition of Behar was naturally a topic of earnest consideration, concurred with all the other authorities in holding that the great need of the province was a law which could enable the ryot to hold his land subject to fixed conditions of tenure, to maintain his occupancy rights when acquired, to be certified of the amount of his rent, and to have a trustworthy record of payments, and to be able to resist illegal distraint, illegal cesses, and illegal enhancement.

**22. General Concurrence of opinion as to necessity of legislation in Behar.**— The opinion expressed by Lord Lawrence in 1868 was justified by report presented in 1879 by a Committee, which had been appointed the previous year for special enquiry into the subject. They reported that it was necessary to recast the entire law, and, as this Report coincided with that of the Select Committee, who had charge of the Rent Bill for Bengal, that the time had come for general legislation, the whole subject was referred to the Rent Commission, whose labours ultimately resulted in the first draft of the Bill, now under consideration. The conclusion, therefore, upon which legislation is now proceeding, is one which, having been enunciated by the Viceroy 16 years ago, has been again and again, since then, arrived at by officials who had especial means of judging of the condition of the Province. The accounts are all to the same effect. "It is manifest," the Government of India writes of the Patna Division, "that the majority of the ryots in that large tract of country (23,000 square miles) are rack-rented." The mass of the tenantry are paying now, so the Collector of Patna reported, rents which have doubled within the last 16 years. The great evil complained of by the local officials is arbitrary enhancement at the will of the landlord. The rents of the Patna district are higher than those of any district in Bengal; those of Durbhunga and Sarun higher than any districts except Hooghly and Burdwan, and in the Gya, Shahabad and Mozufferpore districts exceptionally high. Chumparun is the only district of the Division in which the rents are not abnormal—a result to which its large amount of waste land has probably contributed.

**23. Destruction of occupancy rights.**—A further aggravation of the evil plight of the Behar tenantry is that rights of occupancy, which were at one time, if not universal, at any rate of very general prevalence, are being just obliterated. The following is the account given by the Government of India to the Secretary of State of this branch of the subject :—

Despatch, 31st March 1882, section 53.

"In Behar it is said that not one quarter per cent. of the ryots hold pottahs; and an examination of the *jamabandi* papers (rent-rolls) of Behar estates has shown that 'while 60 per

cent. of the present ryots have held some land in the village in which they reside for more than twelve years, less than one per cent. of them hold at present the same area of land which they held twelve years ago. Inasmuch as these ryots hold no *pottahs* or other documents showing which are the particular fields which they have held for more than twelve years, and which fields were subsequently acquired, it is doubtful whether any of them could, under the existing law, prove their occupancy rights even where these rights exist beyond all doubt.' The Collector of Patna reports that, whenever the zemindar has felt himself strong enough to break occupancy holdings, he has done so, and that the landlords are very active in shifting the tenants from time to time to prevent the acquisition of occupancy rights. The zemindars of Shahabad, at a meeting held on 30th October 1880 at Arrah, deprecated the concession to resident ryots of rights of occupancy of lands held by them for three-years. 'At present,' the zemindars said, 'land-owners prevent the growth of occupancy rights by granting leases for five years only, or by changing the lands, or by managing so that a ryot shall never hold at the same rent for twelve years. In practice, the last expedient is found sufficient, as the Court find claims to occupancy rights not proved, unless the ryots can show that he held the same land for twelve years by proving that he paid the same rent. Under the proposed law, the zemindars would not suffer ryots to remain for three years.' 'Interchange of lands,' observes the Officiating Collector of Sarun, Mr. MacDonnell 'between ryots in a zemindari occasionally occurs, but is the rare exception, not the rule Manipulation by the *patwaris* of the village *jamabandis* to prevent identification of the plot held this year with the same plot held five years ago, is of usual occurrence to prevent proof of continuous holding, and to furnish evidence of the contrary, as well as of a charge in the rates.' The Maharaja of Darbhanga informed Mr. Reynolds that his present practice was to give leases for ten years, and if the raiyat showed himself a good tenant, to renew his lease, and allow him to acquire a right of occupancy, but that if the term were reduced to three years, he would be obliged to eject all his tenants at the end of two years, so as to bar the acquisition of the right."

**24. Effect of enhancements on the tenantry.**—As to the results of these enhancements and other oppressive proceedings on the condition of the people, there is, unhappily, no room for doubt. The evidence laid before the Commission established a decree of general destitution for which it would be difficult to find any parallel in India; certainly not in any locality equally favoured by nature. "The ryots of this Province," wrote Major Hidayat Khan, an important land-owner in Behar, in 1877, "though they labour hard, are yet in a state of almost utter destitution, and that, owing to the heavy assessments laid upon them." Good evidence was given of the exaction of numerous illegal cesses by the landlords, of the enhancement of rents not legally liable to enhancement, of illegal ejectments, and of duress and other illegal methods of enforcing payment of rent. Illegal distraint was so universal that its illegality had begun to be lost sight of. The conclusion, at which the Famine Commission, on the evidence before it, arrived was that the Behar ryot's chronic state was one of abject poverty, close bordering on absolute destitution; that he was, as a rule, rack-rented; that his occupancy rights were being fast destroyed; that he was the victim of much illegality and oppression; and that the condition of the rent law was a very grave hindrance to agricultural prosperity. Exactly to the same effect was Mr. Reynolds' report. "The Behar ryot," he said, "is at once industrious and unthrifty; for he knows that it is his destiny to labour, and he feels that it would be useless for him to attempt to save. Accustomed to a low standard of living, he has no thought of improving his condition, because, hitherto, the circumstances of his lot have made permanent improvement impossible to him. His best hope has been that the zemindar and the mahajun would leave him a bare sufficiency to support life till his next harvest time comes round."

**25. Necessity for protective measures.**—We have of late had a succession of prosperous years, and the ryot may have shared in the general prosperity. The judicious arrangements made by Sir A. Eden with the planters and the praiseworthy endeavours of the planters themselves have, I believe, put a stop to many objectionable and oppressive practices. But this was the condition of the province when legislation was taken in hand, and it would be too much to hope that the seven intervening years have worked so substantial a change in the economic condition of the province as to render legislation unnecessary. We must still, I fear, regard the Behar ryot as among those classes whom the Government is, in the language of the Permanent Settlement, especially bound to protect as being the most helpless and most defenceless.

**26. Tenantry in East Bengal.**—On the other side of the Province we are confronted by a very different state of things. There a robust and determined class of tenants, mostly Mohammadans, have taken full advantage of every opportunity for bettering their position, and, in many cases, resisting the legitimate claims of the landlords. The development of the jute industry has diffused wealth; large tracts of waste land have been acquired on favourable terms; in numerous instances the ryots have purchased "perpetual leases," *i.e.*, the proprietorship of the land subject to a fixed quit-rent. Attempts at exaction have been answered by acts of violence, and the public peace has been, on several occasions, infringed by agrarian disturbance. In 1873 the oppressive manner in which the purchasers of an old zemindari exercised their rights as landlords gave rise to an outbreak, which almost assumed the form of an agrarian league "to hold the rent." The famine of 1874 made it necessary to postpone any systematic

attempt at dealing with the case; but from that time to this the Government has almost continuously had the unsatisfactory relations of the landlord and tenant in the Eastern districts under consideration, the general complaint of the landlords being the indefiniteness in which the law has left, at once, their rights and the procedure for enforcing them, and the practical impossibility of enforcing payments, the legality and propriety of which not even the recalcitrant tenant pretended to dispute. At present the state of things in many parts of the country is scarcely more than a short of truce, pending the settlement of the dispute by legislation. The disputes in Mymensingh may be regarded as a type of the sort of antagonism which generally prevails, and which might, at any moment, lead to a serious breach of the public tranquillity.

**27. Hostile relations of Landlord and Tenant in Mymensin** The papers recently published* throw a vivid light on the friction produced by the hostile relations of zemindar and ryot in that district. The present is the third occasion the Government observes, in answer to a memorial of landowners praying for special coercive measures, "that enhancements of rents have driven the ryots into open hostility against their landlords:—"

* *Calcutta Gazette*, 15th October 1884.

On two previous occasions, in 1868 and 1875, official action was brought to bear upon the ryots, who were persuaded under such influence to agree to their zemindars' terms. "*Since then,*" says the Commissioner, "*the zemindars have been increasing their demands for kabuliyats at enhanced rates, and there has been more or less friction. This culminated in 1882, when the ryots again, for the third time, combined together and resisted the zemindars. This time the combination has assumed a more serious aspect than on the other occasions, probably because the ryots are becoming more and more aware of their rights, and are determined not to be persuaded to anything against their interests by the local officials. They are perhaps not so much to blame, for I fear it must be recorded that the Maimansingh pargana zemindars, relying on the support formerly given to them by the officials, have been very exacting in their demands, and though I am not prepared to say that the kabuliyats got out of the ryots are wholly illegal and unjust, yet it must be allowed that very hard bargains have been driven with the ryots.*" This is the opinion of a Commissioner who has had a very long experience of this part of Bengal, and it is more than borne out by the following remarks of the Collector of the district:—

"A review of the history of the policy of the zemindars towards their ryots in the Maimansingh pargana shows that, so far as this portion of the Lower Provinces is concerned, there might almost as well have existed no rent-law at all since 1859, for the provisions of that and subsequent Acts passed by the Legislature for the regulation of the relations between landlord and tenant seem to have been entirely ignored. Rents have been capriciously enhanced from time to time, and the objectionable system of farming out portions of the estate to the highest bidder seems to have been the rule. When the ryots, during so many years, quietly submitted to such a state of things, it is an obvious deduction that this could only have occurred among a peasantry incredibly and entirely ignorant that they had any rights at all, or that the rent demandable from them by their landlord could be limited by anything but his will. This probably is to be ascribed to the remoteness of the district and its consequent backwardness. The zemindars, while obliged to admit that this has in fact been the result of their management of their estates, plead that, it having been always the custom of the pargana to revise the rent-roll at short intervals, they were perfectly justified, notwithstanding the provisions of the Rent Acts, in preserving the *status quo ante* 1859, and trying to prevent the accrual of rights of occupancy. They also state that the ryots, for their own interest and quite voluntarily, used frequently to change the lands they held by surrendering some and cultivating others. Where a ryot believed that he was liable to summary ejectment after a short term in the event of his not consenting to the term of a resettlement, it became of course of little moment to him what land he held or what land he surrendered, his great object being to hold that the best lands he could at the least rates. Even at present, so far as I have been able to ascertain, there exists a most complete and incredible ignorance among these ryots of the provisions of the rent-law—a state exposing them, on the one hand, to being deprived of their legal rights without knowing it, and, on the other hand, being duped by designing persons into absurd and impossible ideas as regards what the Government may do for them by the new Bill."

It would be difficult, it appears to me, to conceive a state of things more imperatively calling for legislation. The landlords naturally demand that the law shall not remain a dead-letter as regards the assertion of their claims, and that it shall be modified, if necessary, so as to render the collection of rent more cheap, easy and expeditious than at present. This demand the Government has met by the various Bills which have been for several years past under discussion, and the various official investigations to which the discussion of those Bills have given rise. The result has been in Bengal, as in Behar, that a general revision of the law has been found to be essential.

**28. Condition of both parts of the Province necessitates interference**—Neither of the two conditions described above can be regarded as sufficiently tolerable to justify the Government in continued acquiescence. The tenant in East Bengal cannot be allowed to go on defying the law, defending himself against his landlord, whether the claim be legal or illegal, by such rude justice as he chooses to apply. The British Government cannot allow two great classes to stand confronted, the one daring the other to enforce rights, which the courts have ascertained. The landlord is entitled to have his decree for rent executed; but

the Government, which executes it, is surely bound to see that that decree is not unjust or oppressive. On the other hand, the state of things in Behar and portions of Bengal is such as to give rise to the gravest anxiety for the future. Society there seems to have reached, or be fast reaching, the stage described by Mr. Mill, where he says, speaking of Ireland and India, "As the land is a fixed quantity, while population has an unlimited power of increase, unless something checks that increase, the competition for land soon forces up the rent to the highest point consistent with keeping the population alive. The effects, therefore, of a cottier system depend on the extent to which the capacity of the population to increase is controlled either by custom, individual prudence, or by starvation and disease." We have seen that custom, far from checking the increase, in India tends to foster it; that religion enjoins it; that the circumstances of the Behar peasant render prudence impossible. There remains only the other stern remedy for the redundant population competing unrestrictedly for the soil—disease and starvation; and in Behar we have, in my opinion, that terrible remedy already in sight. The inquiries which, for some years, were conducted by the Famine Commission left this conviction, with painful distinctness, on the minds of other members, I know, besides myself; and when people talk, *cœur lëger*, about the prosperity and progress of India, the rights of landlords, the hardship of any interference with those rights, and other like topics, the answer seems to me to ask what is to be the future of this teeming, helpless population, and how can Government, with the facts before it, repudiate the obligation, so solemnly enacted at the Permanent Settlement, and so often admitted since, of interfering whenever necessary, on behalf of the agricultural tenant.

**29. Necessity for due consideration of interests of each class.**—Any measure, accordingly, which attempts to regulate the subject, must deal with the interests of (1) the 110,000 registered owners; (2) the 1,000,000 tenure-holders; (3) the occupancy ryot, himself often a landlord; (4) the non-occupancy ryot; (5) the ryot's tenant or sub-ryot. As the rights of each of these classes are in almost every instance, in some respect or other, indistinct, vague and undetermined; as local custom has varied them in a hundred different particulars; and as the vast majority of the persons concerned are unacquainted with writing, and attach more importance to tradition and local sentiment than to any document, however formal in its terms or solemnly executed, it is no matter of surprise that those who entered upon the present controversy, with decided views and strong pre-dispositions and prejudices, have found plenty of material for strengthening their opinions as the discussion proceeded, and that there should have been on either side much warm feeling and exaggerated, inaccurate and violent language. The task for the legislator is to consider all these conflicting views with absolute dispassionateness, and to devise the plan by which, with least shock to society, least disruption of existing relations, least loss or pain to any class, the general interests of the community may be most effectually promoted.

**30. Proprietary rights must be reconciled with public weal.**—On the one hand, it must be remembered, as to the proprietors and tenure-holders, that "the sacredness of property" is a State axiom of the deepest import; that any interference with existing rights of property by the State is a most serious and dangerous order of remedy, never to be resorted to without the gravest cause or beyond the limit at which it becomes unnecessary. On the other hand, it is necessary to insist, as a fundamental axiom of political economy, and of our policy as the ruling power, on the right and duty of the State to interfere with property whenever the well-being of any class in the community demands interference. It is not too much, I suppose, to say that in all the chief European communities—notably Russia, France, Austria, Germany—it has been found necessary to interfere, to a most serious extent, with rights of the land-owning classes, which, though resting on unquestionably good legal and historical basis, had become incompatible with the modern conditions of society. In Ireland the same remedy has been found necessary. In England the diversion of a great portion of the population to manufacture, and the relief afforded by the development of other industries than agriculture, has rendered the relations of the owner and occupier of the soil a matter of less national importance than elsewhere; but even in England, Parliament has considered it expedient to interfere in some particulars with the free right of contract between the owner of land and its occupant. All the great political economists have justified such interference.

**31. Statutory right and duty of State to interfere.**—In India, moreover, there is this special circumstance, that the right and duty of the State to interfere, its determination to interfere whenever expedient, and the obligation of the land-owners to acquiesce in such interference without attempting to make it a ground for abatement of the payments due by them to the State, are doctrines which have been solemnly and repeatedly enacted as part of the Statute law of the country, and which form part of the title-deeds of every land-owner in India. The Permanent Settlement Regulation was framed on instructions from the Court of Directors to this effect:—

"In order to leave no room for our intentions being at any time misunderstood, we direct you to be accurate in the terms in which our determination is announced * * * * You will, in a particular manner, be cautious so to express yourselves as to leave no ambiguity as to our right to interfere, from time to time, as it may be necessary, for the protection of the ryots and subordinate landlords, it being our intention, in the whole of this measure, effectually to limit our own demands, but not to depart from our inherent right, as sovereigns, of being the guardians and protectors of every class of persons living under our Government."

These instructions were carried out by the Government in Article 8 of Regulation I of 1793, which is as follows :—

"To prevent any misconstruction of the foregoing articles" (fixing the Government revenue for ever) "the Governor General in Council thinks it necessary to make the following declarations to the zemindars, independent talukdars, and other actual proprietors of land :— *First*, it being the duty of the ruling power to protect *all classes of people, and more particularly those who, from their situation, are most helpless*, the Governor General in Council will, whenever he may deem it proper, enact such regulations as he may think necessary for the protection and welfare of the dependent taluqdars, ryots, *and other cultivators of the soil* ; and no zemindar, independent taluqdar, or other actual proprietor of land shall be entitled on this account to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay ."

To the like effect was rule 9 in the kabuliyat, by which section 67 of Regulation VIII of 1793 declared that proprietors should be bound, *viz.*, that "implicit obedience should be shown to all regulations which have been, or may be, prescribed by Government concerning the rents of the ryots, and the collections from under-tenants and agents of every description, as well as from all other persons whatever."

It is difficult to understand how, with these explicit and emphatic expressions before them, there should be some advocates of the zemindars' interests who appeal to the Permanent Settlement as the foundation of the right on the part of the landlords to hold their estates free from legislative interference, and "to make what they can" out of the non-occupancy tenants, and who denounce any proposed restriction of this right as a wholly unjustifiable interference with the rights of private property and even a breach of faith.

**32. Different theories of the State's right to interfere.**—The difficulty is met in different ways. Some writers get over it by denying the constitutional right of Government to interfere at all with the owners of the soil in the matter of rent. "I unhesitatingly assert," writes the author of a pamphlet entitled, by way, I suppose, of announcing its impartiality, calmness and freedom from class-feeling, The Ilbert Bill No. II, "that there never was a time when the zemindar could not make what terms he pleased with his ryots, and that the pergunnah rates, or the established rates of which we hear so much, were the rates which the zemindar himself established." The learned author had no doubt satisfied himself as to the sufficiency of the grounds on which this unhesitating assertion is based ; but I find it irreconcileable with the language alike of Lord Cornwallis, the Board of Directors and contemporaneous legislation,—with Lord Cornwallis' statement that, while the zemindar's "claim to a percentage upon the rents of their estates had been admitted, *the right of the Government to fix the amount of those rents at its own discretion had never been denied or disputed*," or with the language in which the Board gave its sanction to Lord Cornwallis' arrangements : "We expressly reserve the right," they wrote, "which belongs to us as sovereigns of interposing our authority in making from time to time all such regulations as may be necessary to *prevent ryots being improperly disturbed in their possessions*, or loaded with unwarrantable exactions . . . Our interference, where it is necessary, seems also to be clearly consistent with the practice of the Moghul Government under which it appeared to be a general maxim that the immediate cultivator of the soil paying his rent should not be dispossessed of the land he occupied. This necessarily supposes that there were some measures and limits by which the rent could be defined, *and that it was not left to the arbitrary determination of the zemindars. In point of fact the original amount seems to have been annually ascertained and fixed by the Sovereign.*"

**33. A pergunnah rate was in some cases actually fixed.**—The most conclusive refutation, however, of the assertion is afforded by a despatch of the Court of Directors to the Government of India, June 15th, 1819, in which the causes of the omission of the authorities to interfere for the purpose of enforcing a pergunnah rate were discussed. "We conclude," they say, "that the supposed difficulty of the operation was the cause of this non-interference. We find, however, that antecedently to the Permanent Settlement, the power was successfully exercised in several parts of the territory under your Government, and that the advantages of this policy are still felt in those districts, although the general system of your administration has been unfavourable to the preservation and improvement of the advantages thus obtained. We particularly refer to the 24-Pergunnahs, and to part of Dinagepore, when it was under the management of the late Mr. Hatch. In the vicinity of Calcutta also the ryots, as Mr. Colebrook understood, have been supported by the decision of the Adalut in their pretensions to hold their lands upon the rents payable by them, or those whose representatives they are according to the *best (last ?) general measurement which was undertaken by the authority of Government before the Permanent Settlement*, and of which the record is understood to be preserved in the office of the Collector."

The Directors go on to quote Mr. Colebrook's statement that "the Regulations of Benares have maintained the tables of rates of Fasly 1817, and that the canoongoe office yet exists in that province for its preservation." Recurring to Dinagepore, the Directors mention that Mr. Hatch had ascertained, by local investigation, the varieties of rate and pottah, the proportion borne by the illegal cesses to the recorded rental, the quality of various classes of soil, the average gross produce, and "5thly, *that he determined, reference being had to the present and former rates of rent, what proportion of the averge produce should, in each class, be retained by the*

*ryot and what proportion of a fixed money valuation should be received by the zemindar.*" The pergunnah rate thus determined by Mr. Hatch in 1790 is reported by an officer well acquainted with the district to be still held in "universal respect." The same thing is the case, I am informed, in Jessore.

It is needless to add that the whole series of Regulations, which constitute the Permanent Settlement, proceed on the basis that the Government had the right to restrict the rents to a certain specified rate, and was exercising that right in the most explicit manner.

**34. Compensation to landowners for restrictive legislation.**—Another view put forward by the same writer is that, though the Regulation does empower the Government to interfere, whenever it thinks necessary, for the protection of the ryots and other cultivators of the soil, such interference must be accompanied by adequate compensation to those whose interests it may curtail. To this contention there are several answers. In the first place, it is in direct contravention of the Regulation, which expressly provides that "no zemindar, independent talookdar or other actual proprietor of land shall be entitled on this account (*i.e.*, on account of interference by the State for the protection of the ryot) to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay." In the next place, such compensation would be merely, in another form, to lessen the contribution of the land-owners of Bengal to the general revenues, a contribution at present extremely disproportionate to that which every other class pays for the public defence, administration and development of the country. In the third place, any scheme of compensation, short of completely buying out the whole of the landlords' interest in the soil, would be impracticable; and lastly, those who advocate the present reforms do not admit that they are in the long run, and, even in many instances, at the present moment, to the detriment of the landlord. It is for the real interest of the landowner, just as much as of the Government, to have a prosperous, contented and substantial tenantry. Many instances of excellent landlords show the extent to which this fact is realized in Bengal. The object of the present measure is to generalize, as far as possible, the mutual advantages to landlord and tenant of such a state of things, and to guard against the departures from it which negligence or greed on the one hand and lawless impatience of a just claim on the other, are likely to produce. Such a reform does not call for or admit of compensation to any particular class.

**35. Did the protection of the Permanent Settlement extend to non-occupancy ryot?**—Another, and more plausible, contention is that, whatever be the position of the occupancy ryot, the privileges and protection provided by the Regulation did not extend to the non-occupancy ryots. With these, at any rate, it is urged, the landlords were left free to deal "in whatever manner they thought proper." Arguments have been adduced with great acumen and research on either side of this question. I do not propose to recapitulate those arguments. What was the exact position of the pykast ryot—whether he was more favoured or less favoured than the occupancy ryot—how far any distinct line between pykast and khudkhast ryots was, in practice, drawn, the general object being to induce the non-resident ryot to settle, and the non-resident ryot having always at hand the easy remedy of migration to the next estate—are points, as every one who has followed the controversy knows, on which those who have studied the subject with most care are unable to agree; they must be left, I suppose, as unascertainable. There is evidence, however, that the non-resident ryot could not be forced, any more than the occupancy ryot, to pay more than the pergunnah rate, and that he was exempt from arbitrary eviction; and it has been contended, not without forcible grounds, that the only practical difference between the two classes was that the auction-purchaser of the estate was able to cancel the lease in the one case and not in the other. The doubt existed in 1819, when we find the Court of Directors writing to the Government that they were not satisfied as to the nature of the interest possessed by the landlords in the waste lands of permanently-settled districts, and adding, with reference to the view expressed by the Government, that "it is the opinion of many considerable authorities that in leases of waste, as well as of other lands, the pergunnah rates form a standard of payment not to be exceeded." The doubt which existed in 1819 is little likely to be cleared up after the lapse of more than half a century; but we shall see immediately what was the view, taken by the Legislature in 1859, of the law of the country as to each class of ryot. The Government of India, with a view to keep clear of debateable ground, bases its proposed legislation, not on the historical question as to the precise legal limits of the zemindars' powers, but on the necessity of finding "a thorough remedy for a practical evil. We aim at a determination of the case which shall be broadly just to interests which must at some point conflict." The right and duty of Government to apply such a remedy in both classes of ryots cannot reasonably be contested. Its denial would involve the monstrous assumption that the Government, while making the most solemn announcements of its care for every class of tenant, and its resolution to interfere for their protection whenever necessary, and placing the assurance of the ryot's position on the same legal basis as that of the zemindars, arbitrarily excluded from the scope of this beneficent arrangement all the tenantry not then in the enjoyment of occupancy rights, and all the future tenantry of the portion (believed to be between one-third and two-thirds) of the province which was at that time unreclaimed. The mere statement of such a result seems to demonstrate the unsoundness of the assumption which involves it.

Despatch of 21st March 1882. S. 61.

**36. Previous legislation.**—To complete the sketch of the facts of the case, it is necessary to refer to the legislation which has taken place upon it. Of these measures, it is necessary

only to consider Act X of 1859. I have shown, in paragraph 8, what was Lord Canning's view of that Act, *viz.*, that it was an earnest attempt to improve the position of the Bengal ryot and to give him a prospect of freedom and independence by clearly defining his rights, and placing restrictions on the power of the zemindars, which ought, long ago, to have been provided. Its original object was to amend the law as to one particular—the recovery of rent; but it was thought expedient, as the mover of the Bill explained, "to re-enact in a distinct and clear form the provisions of the existing law connected with land rents; and sections 3, 4, and 5, accordingly, set forth *what had been the law since the time of the* Permanent Settlement." Section 3 provided that hereditary ryots at fixed rates were entitled to pottahs at those rates; *"all other ryots and cultivators" were entitled to pottahs at the rates established in the pergunnah for similar lands, or, if no rent rate could be discovered, at the customary rates for similar lands in the vicinity.* Section 4 provided that every resident ryot and cultivator has a right of occupancy, except in the case (1) of sir lands leased for a term, and (2) of sub-ryots. Section 5 provided that *resident ryots cultivating lands not previously in their possession, without a pottah, should not acquire a right of occupancy till they had paid rent for three years.* This is what the mover of the Bill considered to be a statement of the law in force since the time of the Permanent Settlement. What can we infer from it but that the "resident ryot," as opposed to the ryot with a right of occupancy, had certain definite rights, and that the right of occupancy was one to which a short residence, *viz.*, of three years, gave rise. The causes which gave rise to modifications in the Bill as passed are well known. The Committee reported that the pergunnah rates, at which ryots were entitled to hold, were admitted to mean "customary and fair rents; and, with regard to the ryot with a right of occupancy, that it had been pointed out that "residence is not always a condition of occupancy," and that, as 12 years had in 1856 been prescribed in the North-Western Provinces as giving rise to a right of occupancy, they had, following this precedent, prescribed the same period in the Act.

**37. Unexpected results of Act X of 1859.**—The consequences of this rule were little foreseen by its framers. The admitted law was that all resident ryots had rights of occupancy; but it was found that some non-resident ryots had such rights, and it was proposed to meet these cases by a rule borrowed from the North-Western Provinces that an ousted tenant could recover possession by showing 12 years' occupation. It is matter of history how this provision came to be understood, not as supplementary rule, but as an exclusive definition—how, consequently, many undoubtedly resident ryots were ousted on account of their inability to prove 12 years' continuous occupation—and how, in the language of the Lieutenant-Governor, speaking of the Act a few years subsequently, its results had been "wholesale enhancement of rents and ejectment of ryots, who had a customary claim to occupancy, and who, under the law as it previously stood, would probably never have been molested." This view of the unexpected effects of Act X of 1859 has been repeatedly put forward; it was prominently enforced by the Rent Commission; it was adopted by the Government in its despatch in March 1882; and I am not aware that any one has ever contested its accuracy. But if it be accurate, what becomes of the protests, lamentations and objurgations showered so plentifully on the proposal of Government to amend a law which, owing to technical defects, has miscarried in so signal and fundamental a manner, and which produces results the very opposite of those which its authors had in view? The Bill started with the view that all resident ryots had rights of occupancy, that all other ryots were entitled to sit at the settled pergunnah rates, and that rights of occupancy could be acquired by those who had them not by three years' residence. The effect of the Act, as interpreted in our Courts, has been that a ryot, who, and his ancestors for 100 years before him, have resided in the village, may find himself ejected from his holding because he may have been shifted from one plot to another, or may, from some other cause, be unable to prove 12 years' continuous occupation. How can any Government, with any pretensions to a consistent policy, refuse to remedy such a legislative miscarriage?

**38. Provisions of the Bill.**—Such, in general terms, is the problem which the present Bill is intended to solve; such are the different interests which it has to consider and adjust; and such the policy by which legislation must be guided. We will now see what solution in each case is proposed.

The Bill recognises and maintains the existing divisions of those interested in the soil into proprietors, tenure-holders, occupancy raiyats (at fixed rents and at enhanceable rents), non-occupancy raiyats, and sub-raiyats. In order to understand the effect of the proposed legislation, it is necessary to examine with minuteness its provisions as to each class, and to see in what respects they differ from the law as it was laid down in 1859 and has been for the last 25 years, and from that which was in force previous to that enactment.

**39. Tenure-holders.**—And first as to the tenure-holders, in which term is included every interest between the proprietor and the raiyat, and, presumably, the tenant of every holding over 100 bigahs (or 33 acres) who sub-lets any portion of it. The Bill provides that, if a tenure-holder has held, otherwise than as a tenant-at-will or for a term of years, at a rent which has not been changed for 20 years immediately preceding the suit, he is presumed to have held from the Permanent Settlement; and if he has held from the Permanent Settlement, his rent can be enhanced only on proof, either (1) that the

S. 5. (5.)

S. 6 and S. 64.

landlord is entitled to enhance by the conditions of the tenure or local custom; or (2) that the tenant has, by receiving a reduction of rent (other than on account of diluvion or the acquisition of the land for public purposes), rendered himself liable to enhancement, and that the tenant is capable of affording it. His rent may also be increased or diminished on the ground of an increase or diminution of the area for which rent has been previously paid. When a tenureholder's rent is enhanceable, the enhancement will be governed, in the first instance, by any contract between the parties; in the absence of contract, the enhancement may be to the limit of the customary rate payable by similar tenureholders in the vicinity; or, where there is no such customary rate, to such limit as the Court thinks "fair and equitable;" but in deciding what is "fair and equitable" the Court is to leave the tenure-holder with not less than 10 per cent. of the net collections, and is to take into account the circumstances under which the tenure was created, the improvements effected by the tenureholder or his predecessors, and the cost and risk of collection. The enhanced rent must not be more than double the previous rent, and cannot be re-enhanced for 10 years. The enhancement may, if the Court directs, be extended over a period of five years.

S. 66.
S. 7.
S. 8.
S. 10.
S. 9.

A permanent tenure is transferable and may be devised as other immoveable property, except that the holding cannot be broken up without the consent of the landlord. A tenure-holder can be ejected only in execution of decree grounded on breach of a condition, consistent with the provisions of the Act, which, by the terms of the contract, renders him liable to ejectment; and no such suit can be entertained unless the landlord has requested the tenant, if the breach is remediable, to remedy it; if it cannot be remedied, to pay reasonable compensation. The Court, in decreeing ejectment, shall fix a time within which the breach may be remedied or a reasonable compensation be paid, in which case no ejectment will take place. Only on default of the tenureholder to comply with this order ejectment will follow.

S. 11.
S. 97.
S. 98.
S. 12.
S. 170.

**40. Effect of sale for arrears on subordinate holdings: Projected interests.**—When a transferable tenure is sold in execution of a decree for arrears of rent, the purchaser will take, subject to certain interests which are termed "protected," *viz.*, (*a*) an under-tenure which has existed since the Permanent Settlement; (*b*) an undertenure recognized in current settlement proceedings as a tenure at rent fixed for the term of the settlement; (*c*) a lease of land on which buildings have been erected, or gardens, orchards, &c., made; (*d*) a right of occupancy; (*e*) a right conferred on an occupancy tenant to hold at a fair rent; (*f*) any right or interest which the landlord, at whose instance the holding is sold, has expressly, in writing, authorised the tenant to create.

S. 175.

**41. "Registered and notified incumbrances."**—As to all other subordinate interests in, or incumbrances upon, the tenure sold for arrears of rent, they will, if registered and notified to the landlord three months before the accrual of the arrear, be termed "registered and notified incumbrances;" and the tenure will, in the first instance, be sold subject to them; and only if the sum bid is insufficient to discharge the arrear will they be sold with power to the purchaser to annul. The purchaser can in such case, by application to the Collector within a year, annul.

S. 180.

**42. Proposed system of registration.**—There are various other provisions in the Bill affecting tenure-holders along with other classes of tenants which need not at present be considered. It is important, however, to notice that the Government anticipates an improvement in the law, VII of 1876, as to registration of title. By this no tenureholder would be able to sue for rent unless both his own title and his landlord's is registered. If this were the law, and a complete system of registration were effected under it, it would be possible to provide for the recovery of rent by a landlord from a tenureholder by summary process, similar to that now in force in the case of the tenures known as "putni talooks." This would no doubt prove of great advantage to the landlords, and, in fact, is one of the substantial advantages which the Bill proposes to confer upon them. On the other hand there can be little doubt that a complete system of registration would be of first rate importance in the interests of the raiyats.

**43. Twenty years' presumption.**—The first point which has to be discussed in connection with the status of the tenureholder, as thus defined, is whether the 20 years' presumption should still be retained as raising an inference that the rent has not been altered over the Permanent Settlement, and consequently is exempt from enhancement except in the specified cases.

This rule was enacted in 1859, and has been in force ever since. Strong reasons, and those not of a mere speculative order, must be shown for any change. The reasons urged for its repeal are—(1) that it is an infringement of the rights of the landlord under the Permanent Settlement; and (2) that it works hardship to auction-purchasers at sales for arrears of revenue.

The first of these grounds can hardly be seriously put forward in favour of the repeal of an enactment passed 25 years ago, which, having been in use ever since, must be thoroughly familiar to all parties concerned, and as to the practical advantages of which the mass of official opinion appears to be on the whole agreed.

As to the auction-purchasers, as, out of the 147,912 estates in Bengal with a revenue of 3¼ crores, only 647, with an average revenue of 1¼ lakhs, are annually sold for arrears, the grievance cannot, at any rate, be one of very serious extent.

**44. Proposal of Bengal Government.**—The Lieutenant-Governor of Bengal, however, is prepared to meet the landlords' wishes by restricting the presumption, for the future, to cases in which it is shown that there has been no change in the rent from 20 years previous to the passing of the Bill. I confess that, though I am glad of any reasonable concession to the landlords, I do not see any adequate ground for this change in the law as it has now stood for 25 years. The presumption may have worked hardly at first; but it seems difficult to conceive how it should do so now. If a landlord chooses, in defiance of the directions of the Legislature, to keep his accounts in such a way as to be unable to show a change, if change there has been in the course of twenty years preceding the suit, he ought, I think to meet the presumption which the law for the last quarter of a century attached to that state of things; and, surely, if there has, as a fact, been no change for 20 years, it is but reasonable, regard being had to the respective resources of the two parties, that the burthen should be thrown on the landlord of showing that a rent has at some prior date been altered. The balance of local official opinion appears to be decidedly against any change. Alterations in presumptions are always objectionable, and the necessity for alteration grows less every year of their continuance. No such necessity, it appears to me, exists in the present instance.

**45. Enhancement.**—Next comes the question of the restrictions placed by the Bill on enhancement of the tenureholder's rent. As to the interval of time which must intervene between one enhancement and another, it is suggested that the period of exemption from re-enhancement should be 15 years, so as to correspond to that prescribed in the case of an occupancy ryot. This very reasonable proposal is supported by the Lieutenant-Governor, and is hardly likely to encounter serious opposition.

As to the limit in amount, the Bengal Government recommends a section providing that the proposed limit of 100 per cent. on the existing rental shall not apply in cases in which land has been let at a low rate for purposes of reclamation. At present contracts for the reclamation of waste land are, by section 212, exempted from the Act. This section it is suggested, should be amended so as to apply specifically to the present case.

**46. The Ryot.**—Coming, next, to the much larger class of ryots, and to the much more difficult and more disputable questions involved in the consideration of their interests, we are met at the outset by the additional difficulty that, while the landlord's interest is united in opposing any proposal which tends to enlarge the amount or the area of protection afforded to the occupancy ryot, those who are most anxious to provide for the ryot's protection are not in accordance as to the limits to which the enlargement should go, or the conditions under which the privilege should accrue. The existing law, enacted in 1859, makes the acquisition of occupancy rights depend on the continuous occupation of the land, as a ryot, for 12 years.

**47. Proposals of Rent Commission and Sir A. Eden.**—The Rent Commission proposed to retain this rule, but to guard against its failure in future, as it has failed in the past, by imposing a penalty on eviction, Sir A. Eden proposed to describe a ryot, who resided for three years in a village or group of villages, as having "a fixed habitation" therein, and to give rights of occupancy over any land held by a ryot in, or within two miles of, a village in which he had "a fixed habitation."

**48. Proposal of Government of India and Secretary of State.**—The Government of India* recommended a more extensive change. They proposed to take a classification of lands as the basis of a recognition of occupancy right, and to declare that, except in certain specified cases, the right should attach to the occupancy by a ryot of "ryotee" lands. This proposal was disapproved by the Secretary of State,† *first*, as annulling the familiar distinction between resident and non-resident ryots; *secondly*, as departing from a rule recognised ever since 1859; and, *thirdly*, because the failure of the law had, in the opinion of the Secretary of State, arisen from an error, not in the principle of the Act, but in the provisions for its application. This error, it was observed, enabled a landlord to defeat the accrual of rights to the ryot, notwithstanding continuous residence, either by shifting him from one field to another, or by inducing him to enter into a contract barring the right, or by destroying evidence of continuous possession. The Secretary of State accordingly recommended that the "resident" ryot should be one who had occupied land "in the village or estate" for 12 years, and that such ryots should have occupancy rights in the land they occupy and pay rent for.

* 21st March, 1881.

† 17th August, 1882.

**49. Reply of Government of India.**—The Government of India, in reply, pointed out various objections to the Secretary of State's proposal, taking, as the basis of their argument, the distinction between permanent and temporary occupation, and the fact that by the historical law of India, wherever land was permanently cultivated, the tenant held at customary rates, and should not be ejected so long as those rates were paid. They pointed out that the rule proposed by the Secretary of State must tend to a continual increase in the number of unprotected ryots, as occupancy holdings gradually fell in; that it involved a continuance of the evil conflict be-

17th October, 1882.

tween landlord and tenant which it was one object of the Bill to end; that it left the unprotected ryot worse of than before, because it would make it necessary for the landlord, in order to prevent the accrual of occupancy rights, to turn him, not only out of his lands, but out of the village or estate; that its result must necessarily be to lead landlords not to allow resident ryots to acquire fresh lands, but to prefer outsiders, whose position they would be free to dictate at pleasure, and to seize every opportunity of getting rid of the occupancy tenant altogether, and thus to perpetuate antagonism and litigation.

**50. Adoption by Government of India of Secretary of State's proposal for definition of "ryot."**—The Secretary of State then left the matter to the Government of India, to decide at its own discretion. The Government of India declined to legislate on a basis, which had not the concurrence of the Secretary of State, and determined to act on the lines indicated by the Secretary of State. The result has been the definition of the occupancy ryot's status as given in the Bill. It proceeds on the basis of the view taken by the Secretary of State, that Act X of 1859 had failed, not from defect of principle (the principle being that the permanent cultivator should have occupancy rights), but because it was so worded as to make the accrual of the right depend, not on permanence of cultivation, but on the continuous occupation of the particular plot over which the right was claimed. This defect the Secretary of State proposed to remedy by making residence *in the village or estate* the condition of acquiring the status of a "settled ryot," and by giving the settled ryot occupancy rights. This the Bill does, *totidem verbis*, and so far, if the present controversy is ever to close, we must, I presume, regard the matter as concluded. But the Bill goes on to add an important presumption, *viz.*, that every ryot holding land shall be presumed, as between him and the landlord under whom he holds, to have held the land, or part of it, for 12 years, and thus to have become a "settled ryot" in the village or estate in which the land is situate. To this presumption, as well as to extension of the ryot's rights to the whole of the estate in which he settled, strenuous objection is taken.

11th January, 1880.

22nd August, paragraph 10.

**51. Objections taken to the definition.**—As to the latter of these objections, it is pointed out by the Government of Bengal that there is an inconsistency in allowing the ryot rights in his village and not in the whole estate, because, if the ryot is to have occupancy rights in his own village, he will, perforce, in many cases, have them in different estates, inasmuch as portions of one village often lie in several estates. It is further urged that the extension of the right to the "estate" is very little likely to occasion hardship to the landlord, inasmuch as the greater majority of the ryots are in the humblest circumstances, "barely able to keep body and soul together," and not at all in a position to extend their holdings; that the tenant can acquire new land only by the consent of the landlord, and that if he does acquire it, it is desirable on public grounds that his position should be assured as to the new acquisition no less than as to the rest of his holding.

**52. Meaning of "The Estate."**—There is considerable conflict of opinion as to what the "estate" is to be, in which the settled ryot is to have occupancy rights, whether the estate as it stood in 1853, all subsequent partitions being disregarded, or some latter date. The Government of Bengal is prepared to agree that the estate shall be that which exists at the passing of the Act. This would greatly narrow the area which the right of occupaucy, grounded on the presumption, would affect. As the proposal stands, it does seem a somewhat remarkable result that a right, arising out of a presumption raised by the mere fact of residence in a village, should, as between the tenant and the owner of that village, operate not only in the estate, in which the village is situate, but in the whole of an area which, from 1853, may have constituted two or three perfectly different estates from that in which the occupancy is claimed. If the Bengal Government's proposal is accepted, occupancy right, to which the presumption, while unrebutted, gives rise, will be confined to an area which, at the passing of the Bill, constituted a single estate.

**53. Presumption arising from holding land as a ryot.**—The presumption that a person who holds land as a ryot, has held it, or some part of it, for 12 years, has been greatly misunderstood. It has been taken as meaning that the mere fact of holding a plot of land is to throw, not only upon the landlord of that particular holding, but upon the owner of any other land in the estate, of which the ryot is in possession, the burthen of proving that the ryot has not for 12 continuous years occupied land in any portion of the estate in which the land is situate, or in any estate of which the estate in question formed a part in 1853. No such extravagant proposal is contained in the section. The presumtion applies merely to the land of which the tenant is in occupation, and it operatus merely as between him and the landlord of whom he holds. The removal of this misapprehension gets rid of one main objection which has been taken to the section. The proposal simply is that a ryot, holding land, shall, as between him and his landlord, be presumed to have held it or some part for 12 years as a ryot. The justice and propriety of this presumption depend on the principles which govern all presumptions. One of these is that the fact or state of things presumed shall be one of much more general and probable occurrence, in the ordinary course of human affairs, than the fact or state of things presumed against. Another is that the burthen of proving a fact is thrown on the person to whom the means of proof are more available than to the other party in the dispute. Applying these principles, the Select Committee and the Government of Bengal concur in

regarding the present presumption as no more than a recognition of existing facts; and their opinion appears to be justified by the opinion, which, I believe, had the sanction of the late Hon'ble Kristodas Pal, that 90 per cent. of the Bengal ryots are now in the enjoyment of occupancy rights. No one puts the proportion of occupancy ryots at less than 70 per cent.; and, this being so, there would seem to be reason, so far, for presuming that what in at least seven-tenths of the cases is admitted to be the fact.

**54. Burthen of proof thrown on party best supplied with means of proof.**—As to the question of means of proof, there can be little doubt that the landlord, as a rule, is in far better position to prove any fact about a holding on his estate than the tenant. The landlord has his office, his records and books, his accountants. There are besides the public registers, made up on returns which he is bound by law to make. On the other hand, there is an ignorant peasant, with nothing, at the best, but a few scraps of paper, which he cannot read, by way of documentary proof. If there ever was a case in which the burthen of proof may justly be thrown on the stronger and better-equipped party to a dispute, this would seem to be one.

**55. Concurrence of opinion as to position of occupancy ryot.**—On the whole, the definition and the presumption appear to me to be justified by the history of the case, and by the conclusions at which the Secretary of State and the Government of India have, after an elaborate enquiry, and with all the facts before them, arrived. All parties are agreed that there is a very large class of tenantry in the enjoyment of certain privileges which tend greatly to their prosperity, and so to the well-being of the State. The consolidation of those privileges, and the extension of the area to which they should extend, was one of the chief desiderata recommended by the Famine Commission. The same view has been taken by Sir A. Eden, the present Lieutenant-Governor, the Government of India, and the Secretary of State. It must now be regarded as the acknowledged and deliberately adopted policy of the British Government in India. This being so, how is this policy to be better enforced and these ends to be more effectually attained than by such an expedient as the one in question, which adopts the rule which has been in force for the last 25 years, gives to that rule the effect which the framers of the Act of 1859, in the opinion of the Secretary of State, intended it to have, and supports by presumption, which the facts of the case are shewn fully to justify? There are, no doubt, inconveniences in the definition as it at present stands. One of these is that a landlord would be unable to let a field temporarily to a "settled" ryot without his acquiring an occupancy right in it; and, again, that a person who acquires by purchase an occupancy right would seem thereby to acquire occupancy rights in all lands held by him in the estate. Another result pointed out by Field, J., is that a non-occupancy ryot, who subsequently inherited a fractional share of a single cotta, would, under sub-section (4), become an occupancy tenant of his original holding, despite a contract to the contrary. Another is that, as sub-sections 4 and 5 stand, there might be ryots with some fractional share in the father's occupancy holding, who could not live on it, but still could not hire land in any part of the estate without acquiring an occupancy right in it. But it would, I think, be possible in Committee to devise some provision to counteract these and like inconveniences; and, on the whole, if it is determined to abandon the plan, proposed by the Government of India, of conferring a right of occupancy on the tenant of "ryotee" land, whoever he may be, it is difficult to see what better general definition of the occupancy ryot can be given.

**56. Incidents of the occupancy holding: Transferability.**—We next come to the incidents of the occupancy right. As to these the most important difference of opinion is as to transferability. This is a very old controversy, and the evils incidental to transferability on the one side and non-transferability on the other have been exhaustively discussed. It is admitted that the occupancy ryot of the Permanent Settlement had no right to transfer, nor was the right recognized by Act X of 1859. On the other hand, there is a marked tendency of usage in the direction of transferability, and the Rent Commission reported that occupancy rights are freely transferred in every district of Bengal except Sarun and Chumparun. The statistics given in the Appendix to the Bengal Report, to a large extent confirm this statement. The Registered transfers of occupancy holdings in 1883-84 were as follows:—

| | Number of transfers. | Area in bigahs. | Rental. Rs. |
|---|---|---|---|
| Occupancy holdings at fixed rates . . . . . | 20,000 | 125,000 | 1,97,000 |
| Occupancy holdings not at fixed rates . . . . | 47,000 | 313,000 | 3,25,000 |

The purchase-money was 18¾ lakhs in the one case and 32 lakhs in the other, the average area being in both cases about 6·7 bigahs. During the same period occupancy holdings at fixed rates, of the aggregate amount of 3,33,000 bigahs, were sold in execution of decree for Rs. 3,41,000, and other occupancy holdings aggregating 3,74,000 bigahs were sold for 4 lakhs. This gives over a million bigahs transferred in the year, and appears to show that in many parts of Bengal, at any rate, the sale of occupancy rights has grown into a recognised custom, especially as, among the registered sales, a large number were to the landlord of the selling ryot or to other landlords. In 42,000 cases the sale was to other ryots, and in less than 10,000 to mahajuns.

**57. Proposal of the Lieutenant-Governor.**—Altogether the figures appear to warrant the conclusion arrived at by the Bengal Government that in Bengal Proper, as opposed to

Behar, the practice of transferring has become too generally recognised in practice to be ignored in legislation, and also that the belief that the right of transfer leads necessarily to the land passing wholesale into the hands of mahajuns has no very solid foundation. The Lieutenant-Governor proposes to substitute for the right of pre-emption given to landlords by the Bill (which all parties agree in considering unworkable) a provision giving the landlord the right of vetoing any sale made to other than a cultivating occupant. This would enable the landlord to exclude the mahajuns as a holder, and at the same time place as small a restriction as possible on the ryot's power of turning his interest in the land to the best account.

In Behar, where the practice of transfer can hardly be said to exist (only about 6,000 acres having been transferred in 1883 out of an area of 13½ millions of acres), it is proposed that the matter should be left to be regulated by local custom. The effect of this proposal will be to leave matters as they are in those parts of the country in which the custom of transfer has not yet been established; but to give legislative recognition to it in those parts in which custom is shown to be generally prevalent, at the same time assuring the landlord with an important power to veto, which he does not appear to possess at present.

✓58. **Consequences of introduction of right of transfer.**—This proposal certainly cannot be regarded as revolutionary, and it is in general accordance with the recommendation, which after mature consideration, the Famine Commission offered as the best practicable solution of this difficult question. Whichever course is adopted, *some* evil results will certainly ensue. On the other hand, the denial of the right of transfer admittedly lowers the value of the occupancy rights, and any restriction on it, so far, impairs its usefulness. Where it is now exercised, it would seem a harsh measure to prohibit its exercise. On the other hand, the right of transfer necessarily facilitates the acquisition of land to money-lenders and other non-agriculturists; and its introduction, where it is still unknown, leads inevitably to the wasteful employment by improvident ryots of new-found means of raising or borrowing money. In such a district, for instance, as the Sonthal Pergunnahs, the recognition of the power of sale would, no doubt, work badly in enabling a rude and improvident population to dispossess themselves of their lands in favour of a money-lending class. The report for 1883-84 of the Sonthal Pergunnahs mentions facts which appear to indicate the desirability of not forcing the extension of the power, by premature legislation, on the less advanced portions of the province.

*Calcutta Gazette* for 23rd July.

59. **Suggested modification of the Lieutenant-Governor's proposal.**—It may be necessary to adopt the Lieutenant-Governor's proposal as a compromise between conflicting views; and the opponents of the right of transfer will think the compromise much better than nothing. It is certainly preferable to the proposal to give the landlord a right of pre-emption, which is open to numerous objections, and is generally condemned. There is, however, much to be said in favour of allowing such transfers to be made only to *bonâ fide* cultivators. As Mr. Justice Field observes, it is difficult to see "the expediency of taking away any portion of the zemindar's proprietary right in order to confer it on another class, which consists of mere receivers of rent and does not create capital by the application of labour to the soil." I should be disposed to place the veto with the Collector instead of the zemindar, whose assent would always be purchaseable by a salami and not without one. The parties should, in every case but certain specified exceptions, disability, &c., be obliged to satisfy the Collector that the purchaser was a *bonâ fide* cultivator, who himself intended personally to cultivate the plot. Without a certificate from the Collector to this effect, no sale should be registered. This would no doubt narrow the area of purchasers and occasion delay; but these results would not be without their solid advantages. The right of transfer is an unhealthy growth upon the occupancy right, and by no means to be encouraged.

60. **Other restrictions on right of Transfer.**—Supposing His Honour's proposal to be adopted, the landlord would still retain the right of pre-emption at an auction sale under section 33, and his right, under section 34, to foreclose in case of a mortgage decree. It is not clear, however, as the Bill now stands, what would be the position of a landlord who had thus foreclosed. The ryot will not, under section 97, be able to sell a part of his holding without his landlord's consent; and (except in certain specified cases) he can make a gift of it only by registered deed. For this the Lieutenant-Governor would substitute a provision limiting gifts of the occupancy right to the donor's family, and, in that case, doing away altogether with the landlord's right of pre-emption.

S. 33.

S. 34.

S. 97.

61. **Subletting.**—Another much disputed incident of the occupancy right is the power to sublet. The Bill deals with this by providing, in section 37, that a ryot who sublets more than half his holding may (except in certain cases of disability to cultivate), on registration as tenureholder, be converted into a tenureholder, though he will still remain liable to enhancement as a ryot. The most important effect of this would be to elevate his sub-ryots to the status of ryots capable of acquiring occupancy rights. Another result would be that, in case of the holding being put up for sale in execution of a decree for rent, the property would, in the first instance, be sold subject to existing incumbrances. This section is condemned by official opinion as unworkable, and is abandoned by the Bengal Government. In lieu of this the Lieutenant-Governor proposes, by way of protection to the sub-ryot, to abandon section 62

of the present Bill, and to restore section 119 of the original Bill which limited the money-rent payable by a sub-tenant to five-sixteenths of the gross value of the produce. Section 62, which limits the sub-ryot's rent to a sum not exceeding the lessor's own rent by 50 per cent. where the lease is under a registered deed, and 25 per cent. in any other case, is discarded as calculated to produce hardship in some cases (of which the guzastadars of Shahabad are given as an instance), and as certain to be evaded in practice. The protection afforded to the sub-tenant is the least satisfactory portion of the Bill; and if the sub-ryot is to get any real advantage under the Bill, some better means for securing him from oppression and extreme competition must be devised. For my own part I am unable to see why the sub-ryot should not, as against the ryot, enjoy the same privileges, and acquire rights corresponding with those, which the ryot enjoys or acquires against his landlord. This point, however, will be discussed hereafter under the heading "Sub-ryot."

Another restriction of subletting by the ryot provided by the Bill is that the lease shall not, except in certain cases of disability, hold good for more than seven years. It does not seem to me clear how the provision would operate, whether to the advantage of the ryot or sub-tenant, or what the object of it is.

**62. Enhancement by contract.**—The next point is the occupancy ryot's liability to enhancement. The Bill provides for this by recognizing enhancement of a money rent, first, within certain limits, by contract between the parties, and, secondly, by decree of court on certain specified grounds. As to the first of these modes of enhancement, the conditions prescribed are—(*a*) that the contract must be registered; (*b*) that the enhancement shall not be more than 25 per cent. on the existing rental; (*c*) that the contract must be for a period of at least seven years, and if the enhancement is more than one-eighth, for 15 years; and (*d*) that the registering officer must, before registering, ascertain the legality of the contract and the competence, willingness, &c., of the ryot.

**63. Objections of Bengal Government.**—These provisions are objected to on opposite grounds by the two parties to the present controversy. On the one hand it is urged that there is nothing to justify the Legislature in interfering with the freedom of contract between landlord and ryot; and that as the amount of enhancement permitted in cases of contract is less than that obtainable by suit, there is a distinct premium on litigation. On the other hand the Bengal Government views with apprehension the sanction which the Bill will give to enhancements, which it considers would be fatal to the tenantry if realized in practice. It regards, too, with distrust the so-called "amicable arrangements" which are arrived at between landlord and tenants without the intervention of the Court. It fears that the maximum laid down by the Act will become the standard up to which landlords, as a rule, will endeavour to force their rental. The limit of 100 per cent. to the enhancement of a tenureholder's rent in section 8, the limit of 25 per cent. in the present section, and the same limit in the case of an enhancement on account of a rise in prices, seem to the Lieutenant Governor "excessive." The rents in Behar, he says, are already, on unimpeachable evidence, too high. An enhancement of 25 per cent. every 15 years will quadruple the rent in less than a century, a rate of increase which might well be regarded with apprehension. In face of the alarming increase which has taken place in Behar, the Bengal Government presses for the imposition of an ultimate check on enhancement in the form of a provision that in no case shall the rent be more than $\frac{1}{4}$th of the gross produce of the staple food-crops. The Lieutenant-Governor thinks that there are no insuperable difficulties in the way of ascertaining the gross outcome, and regards the proposed restriction as the only adequate barrier against a tendency to higher rents, which must ultimately impoverish the ryot. The restriction proposed by the Lieutenant-Governor has this in its favour, that the rate of 20 per cent. is that which the landlords of Eastern Bengal, in a memorial presented in 1876, suggested as a proper maximum. One of their prayers was that, "in cases in which there was any doubt as to what the competitive rent was, a ratio 20 per cent. or one-fifth of the money value of the gross produce of the land (taking an average of 3 years) be declared as the rent to be decreed." Besides imposing this, Mr. Rivers Thompson would not give legislative sanction to a higher increase, by means of contract, than $\frac{1}{8}$th every 15 years. This would double rents in the course of 90 years. In Behar the Lieutenant-Governor would wish the intervals at which enhancement may take place extended to 30 years.

**64. Enhancement by decree of Court.**—As to the second mode of enhancement the grounds prescribed by the Bill, on which, apart from a registered contract, rent may be enhanced, differ in some particulars from the existing law. Under this the grounds are—(*a*) that the rent is below the prevailing rent for similar holdings; or (*b*) that there has been a rise in prices; or (*c*) an increase in the productiveness of the soil, produced otherwise than at the ryot's expense; or (*d*) that the area which the ryot actually holds is larger than that for which he pays rent. As to the last of these grounds, which is properly treated, not as an enhancement, but as an increase of rent, owing to a rectification of an error as to the area of the holding, there is no dispute.

Act VIII of 1869 (B.C.), section 18.

**65. Enhancement on ground of increased productiveness.**—As to (*c*), the Bill superimposes the condition that the increase of the productiveness of the soil must, except in the case of increase arising from fluvial action, have been at the expense of the landlord. The reasons adduced are, first, that the increase of productiveness from natural causes has proved practically impossible to prove, and the provision, as it stands, is unworkable; and, second, that

if a change is necessary, it should be in the direction of giving the tenant, and not the landlord the benefit of any increased productiveness to which the landlord has not contributed. The only causes, apart from landlords' or tenants' improvements, by which productiveness can be increased, are the introduction of canal irrigation or fluvial action. As to the former, it seems to me imperative to make some adequate provision as to the mode in which the increased value of the soil consequent on the introduction of canals is to be divided between landlord and tenant. As the land tax payable by the landlord is fixed, and as the other taxes which he pays are quite inconsiderable, the result is that, to a large extent, the canals are made at other people's expense than at the landowner's. There is no owner's rate, as in some other parts of India, and consequently the entire burthen is thrown upon the occupier. The consequence has been that in many cases, the immediate consequence of the introduction of canals has been to double or treble the rental, and this rise of rents has been frequently mentioned by the irrigation officers as one great impediment to the progress of canal irrigation.* The occupier finds it better worth his while to go on without canal water than to take it subject to the higher rental which the landlord immediately demands. This subject ought to be expressly provided for.

* Bengal Irrigation Report for 1880-81.

As to enhancement on the ground of increased productiveness owing to fluvial action, the Bengal Government points out that chur or deurah lands, *i.e.*, lands liable to improvement or deterioration by fluvial action, are expressly provided for by section 218, the terms of the lease being left, in such cases, to contract, subject to the acquisition of a right of occupancy by twelve years' continuous occupation, and that lands, which have ceased to be chur lands, ought not to be enhanced on account of an occasional inundation. The Lieutenant-Governor would, accordingly, omit this ground of enhancement. The Bill provides (section 47) that the increase of productiveness, relied on as a ground of enhancement, must not be "temporary or casual," so that the case contemplated must be such a change in the course of a river as to permanently change the character of the soil by inundation, deposit, &c., or by removing its liability to occasional inundation.

Supposing such a change, it is difficult to see why the landlord should not get a portion at any rate, of the increased value of his land; or why, as provided by section 47, the enhancement should be restricted to 25 per cent. on the previous rental, as well as a moiety of the net value of the increase. The present law seems juster to the landlord than the Bill. If the value of the soil has increased from causes to which neither landlord nor tenant have contributed, the landlord is surely entitled to a share; and if the occupancy tenant got the benefit of half the increase, he would have no reason to complain.

**66. Enhancement on the ground of landlord's improvements.**—As to enhancement on the ground of increased productiveness caused by the landlord, the Bill requires that the improvement should be registered, and directs regard to be had to the increase likely to be produced by the improvement; to the cost to the tenant of utilizing it; to the existing rent and the resources of the ryot; it also allows the enhancement to be made conditional on its results, and subject to review. There is a further condition provided by section 48, *viz.*, that the enhancement must not be unfair or inequitable. The Bengal Government would further restrict enhancement by providing that in no case should the rent be more than doubled. The doubt would appear to me to be whether all these restrictions will not operate to deter landlords from laying out money in improvements, the fruition of which, in the shape of a higher rental, is circumscribed in so many directions. The matter is not, perhaps, of much practical importance, as it appears not the practice of the Bengal landlords to invest money in improvements.* Still our legislation ought to encourage the landlord to improve. In the present condition of the law neither landlord nor tenant seem disposed to do so. "It is a fact," the Bengal Government observes,† "that over large areas in these Provinces, dependant on irrigation for a full crop a remarkable decline in the number of improvements has taken place in recent times, except where the landlords have been driven by the baoli or metayer system to improve. This fact the Lieutenant-Governor attributes to insecurity of title, and liability to enhancement which prevails. The reclaiming cultivators of earlier times, who cleared the country from jungle and built the reservoirs and enbankments, which rendered cultivation possible, have been superseded by farmers, holding under short leases, whose interests are so little bound up with the land or the people that they do not find it even worth while to maintain the works which they found in existence. The more secure the ryot's tittle the greater his improvements."

* Patna Conference, s. 49.

† Report, s. 67.

**67. Enhancement on the ground of a rise in prices.**—As to (*b*), enhancement on the ground of a rise in prices, the Bill provides that a rise in the average prices of staple food-crops, in the locality or at the usual markets, shall be a ground of enhancement. The average price is to be ascertained by comparing the average price-lists, published by Government, of the preceding quinquennium with those of such other quinquennium as the Court thinks equitable. The enhancement must not be more than 25 per cent. on the existing rental; no enhancement is permissible if, under the circumstances, the Court considers it unfair or inequitable; and, subject to these conditions, the enhanced rent shall bear to the former rent the same proportion as the prices of the latter quinquennium to the former.

S. 45.
S. 48.

**68. Ought food-crops alone to be considered?**—Upon this several questions arise. In the first place, ought the prices of the staple *food*-crops alone to be considered? The Lieutenant-Governor thinks that a normal rise of prices, which is the point to be considered, is, on the whole, best ascertained by reference to the general price of food staples. On the other hand, he points out cases in which the rule might work unfairly. Supposing, for instance, that food-grains increased in value, no rise taking place in the price of non-food staples, a ryot, whose crop was non-food, would find himself liable to an enhanced rent without any equivalent increase in his receipts. On the other hand, the converse case would act unjustly on the landlord. It is to be observed that, in the case of cultivators who produce only food enough for their own support, the rise in prices operates against them as affecting the cost of any labour they employ and of anything they have to buy; and, in the case of a cultivator who raises a non-food crop and buys his food, a rise in food grains, without a corresponding rise in non-food staples, is so much pure loss. On the whole, there seems no sufficient reason for the restriction of the staple crops, by reference to which prices are to be judged, to food-grains. Some officers* advocate the inclusion of non-food crops on the ground that they are less liable to fluctuations than food crops. The simpler and fairer plan would seem to be to provide that the prices of all staple products should be taken into account, leaving to Government to declare in each locality what the staple crops are.

* Patna Conference, s. 25.

**69. Ought increased cost of production to be considered?**—Next comes the question whether, in cases of enhancement on the ground of a rise in prices, the increased cost of production ought to be taken into account. The Bengal Government gives cogent reasons for thinking that it ought. It seems pretty obvious that, if what we are looking to is the increased capacity of the tenant to pay rent, no inference, based on the increased value of his produce, can be sound, which does not take into account any increase of the outlay involved in obtaining that produce. Such a ground would probably be taken into account, under section 48, in considering whether the enhancement was "in the circumstances fair and equitable." The Lieutenant-Governor recommends that the increased profit derived from the rise in prices should be divided between the landlord and tenant. Thus, supposing a rise of 25 per cent. in prices, he would allow enhancement to the extent of 12½ per cent., and if this were conceded, he would abandon the restriction to 25 per cent. of the former rent now provided by section 45. This would leave the rule pretty much as it now is, *viz.*, that regard must be had to the net value of the produce.

**70. Enhancement on the ground of rent being below the prevailing rate.**—Another ground of enhancement provided by the Bill is that the rent is below the prevailing rate payable by occupancy ryots for similar holdings in the vicinity. The retention of this ground, which exists under the present law, is strongly objected to. Mr. Reynolds mentions it in his dissent from the report as "fraught with serious danger," and as tending, in conjunction with other provisions of the Bill (especially the removal of the restriction on the initial rent demandable from a non-occupancy tenant, and the concession of the power to increase a new occupancy ryot's rent by 25 per cent. on that of the outgoing tenant), "to put into the landlord's hand a powerful engine for enhancing rents up to the maximum amount which the tenant will pay rather than give up the land." The Bengal Government concurs in Mr. Reynolds' disapproval of the retention of this ground of enhancement, which, it says, "is condemned by the weight of authoritative opinion as illogical, unnecessary, and mischievous." As this was one of the grounds of enhancement formerly enacted by Act X of 1859, and has been recognised ever since, its abandonment needs very clear justification. The Lieutenant-Governor, after mature consideration of the facts, records his conviction that "there can be no longer any doubt that the retention of the prevailing rate as a ground of enhancement is unjust and fraught with the utmost danger to occupancy ryots who form the vast mass of the peasantry in Bengal." The grounds of this opinion appear to be that the idea of a "prevailing rate" arose from that of the "pergunnah rate," the existence of which, and the possibility of its discovery, all the earlier legislation on the subject assumes; but all recent experience has shown that no such generally prevalent rate can be discovered, nor even (such are the inequalities which from one cause or another have grown up in the same localities) constructed. Assuming, then, that no generally prevalent rate exists, the effect of a rule prescribing reference to such a rate is to provide a vague and shifting standard, which has a constant tendency to rise, according to the eagerness of the landlord to press his interests and the inability of the ryots to defend theirs. As each occupancy holding falls in, or is purchased by the landlord, the landlord will, in the case of non-occupancy ryots, demand whatever rent he pleases; and can claim an initial rent from a new occupancy tenant 25 per cent. in advance of that paid by the old tenant; and he will have, besides, the general powers of enhancement on the grounds already noticed. There will, accordingly, it is urged, be a general tendency to a rise of rentals; and the rule which allows the landlord to enhance occupancy rents with reference to other rentals which have risen in obedience to this tendency "places the rights of the vast body of cultivators at the mercy of the feeblest, the stupidest, the most venal of the class."

The Lieutenant-Governor is prepared to accept, in lieu of the present rule, a provision that enhancement may be allowed wherever the rent is shown to be unduly low with reference to the rates which prevail in the village or estate for occupancy ryots with the same advant-

ages, &c., provided that the rate has been framed and promulgated by Government under the provisions of the Bill (Chapter XI) for the framing of a table of rates.

If this suggestion is adopted, it will no doubt have the effect of freeing the reference to the prevailing rate, as a ground of enhancement, from many of the evil consequences now attributed to it, and of rendering landlords much more eager than they would otherwise be likely to be to have a table of rates drawn up. The compromise seems reasonable; and those who, with the Lieutenant-Governor and Mr. Reynolds, view with alarm the tendency to enhanced rents, will, no doubt, gladly accept it as a substantial modification of the existing law in the ryot's favour.

**71. Difficulty occasioned by difference between nominal and actual rental.**—With regard to the entire question of enhancement, we are met, at the outset, with a difficulty of the gravest kind. There is reason to believe that the rent actually paid, or of the payment of which there is any reasonable expectation, differs materially, in most cases, from that shown as due in the zemindars' books. Of this we have a striking instance in the experience of the Court of Wards. The estates, which, from one cause or another, come under the management of the Court of Wards, are, it must be supposed, a fair specimen of the generality. The following is the account, given in the Report for 1883-84, in explanation of the fact that, though the arrear due on the 206 estates under the Court's management during the year was 53½ lakhs, and the current demand over 54 lakhs, the actual collections were only 50½ lakhs. "This appearance of bad collections is to be explained by the system on which zemindari accounts are almost invariably kept by private proprietors. While one set of rates is entered as payable in the accounts, another rate is actually paid. The full rent which is entered in the zemindari books may be paid in the most favourable years; but, as a rule, a zemindar is willing to receive and be satisfied with a rental considerably below the amount of the full demand shown as a balance against the ryot, or, in some cases, it is kept alive by instalment-bonds executed by the ryot. Almost every estate under the Court of Wards comes under its management, with large unrealizable balances, and it is found that even the current demand is not realizable in spite of all the exertions of the managing establishment. Year after year the percentage of collections from Wards' estates is less than the current demand. The result has generally been considered unsatisfactory; but no other result can be shown without oppressing and harassing the tenantry. It is no exaggeration to say that a fair and liberal zemindar does not collect more than 75 per cent. of his nominal rent-roll on an average of years. There is good reason for believing that in some of the eastern districts the average of late years has not exceeded 60 per cent." It is obvious that such a state of things, in which the tenant has always an arrear of rent against him, which it is impossible for him to clear away, while the landlord has a nominal rental which he can at any moment enforce, but which, it is understood, will not be enforced except in some exceptionally prosperous year, or unless the tenant makes himself obnoxious—leaves the tenantry really at the mercy of the landlord, destroys every incentive to improvement and every germ of independence, and may, at any moment, become, in the hands of a grasping or unscrupulous landlord a most potent instrument of oppression. It may not incorrectly be described as the precise antipodes of the position in which it was the object of the Permanent Settlement to place the ryot.

**72. Acquisition of ryots' rights by landlord, and vice versa.**—One of the most important considerations connected with the status of the occupancy ryot is the effect—(1) of purchase or acquisition by the landlord of the ryot's interest; and (2) of the acquisition by the ryot of the landlord's interest, or of the fact that, during the occupancy, the same person has represented at once the occupying ryot and the landlord, either solely or conjointly with others.

As to (1) it is obvious that, if the landlord is able to buy out the occupancy tenant, and either to hold the land as khamar, or to let it to unprotected tenants, a great facility is afforded for the increase of an unprotected class of tenantry and for the curtailment of the area occupied by settled ryots.

As to the second, where, as is often the case, land belongs to several coparceners, and is held by one of their number as tenant of himself and the rest, there seems to be no reason why occupancy rights should not accrue; though, I believe, the present law is against the accrual. Sections 28 and 29 deal with this subject, but not very satisfactorily. It is not enough to provide, as section 28 does, that the acquisition by the landlord of an occupancy tenant's rights shall not injuriously affect a third person. What is wanted is a provision that the change shall not have the effect of replacing a protected ryot by a wholly dependent one. It is, besides, by no means desirable to encourage the purchase of ryots' rights by the landlord. I would meet the case by providing that, as against the ryot, the sub-ryot shall have all the rights which the ryot has against his landlord; that, if he has resided in the village or estate for 12 years, or otherwise comes within the definition of a "settled ryot," he shall be deemed to have, as against the ryot, and subject to the landlord's rights, occupancy rights; and then, on the sale of the occupancy right, the landlord would merely stand in the ryot's shoes, and the sub-ryots would become his ryots with the same rights against him that they had against the ryot. In the case of no rights having accrued to the sub-ryot, the right of imposing an initial rent and enhancement should be strictly limited to the rates and enhancement permissible in the case of occupancy tenants, so as, in effect, to place the sub-ryot in the position of the occupancy tenant whom he will replace.

As to the second case, I see no reason why the tenant, who has a share in the landlord's interest, and who, with the consent of the co-sharers, has occupied the land as tenant, should not acquire occupancy rights; but where, as in the case of a tenure-holder, the landlords' interest is subject to a higher proprietary interest, the tenure-holder ought not, as the Bengal Government points out, to be able to fortify his title against the superior holder by rights acquired by himself as occupant against himself as tenure-holder. The proposal, accordingly, to strike out the words "or tenure-holder" in section 29 appears to be reasonable.

(*a*) Sub-section 2 of section 29 might be worded "shall not, by occupation of land within the area of his tenure, during its continuance, acquire a right of occupancy therein."

(*b*) A person who has a right of occupancy in land shall not lose it by subsequently holding the same land in farm.

(*c*) If a person who has a right of occupancy in land in which he is joint-proprietor, subsequently, on partition, becomes sole owner of the land, such land shall become "khamar or zerat."

**73. Restriction of occupancy ryot's power to contract.**—One important aspect of the occupancy ryot's position, as defined by the Bill, is that presented by section 210, which enacts that no contract shall override the provisions of the Bill as to the status of the occupancy ryot, the acquisition of occupancy rights, its incidents, the occupancy ryot's right to demand a diminution of rent on the ground of deterioration of soil, fall in prices or diminution of area, his right to demand a commutation of a produce rent into a money rent, his right to make improvements and claim compensation for them, and his immunity from ejectment except in execution of decree. The removal of these important matters from the sphere of contract has naturally excited much hostile criticism, all the more so that both Act X of 1859 and Act VIII of 1869, which re-enacted it for Bengal, expressly provided that their provisions should be subject to a written contract between the parties. The propriety of excluding certain contracts of ryots from the ordinary law of contracts was much discussed, when the Indian Contract Act was passed in 1872. Sir George Campbell, who was then Lieutenant-Governor, was strongly in favour of making express provision to meet the case of contracts by ryots, and I think drafted a section or an illustration to carry out this object. His proposal was overruled, if I remember right, on the ground that the Bill, as it stood, provided sufficiently for all the grounds—fraud, misunderstanding, ignorance, undue influence, coercion, &c.—on which the legality of a contract could be impugned; and that it was better to leave the law in this form than to declare any particular class of persons incompetent to contract, or any particular class of contracts invalid. Grave reason ought to be shown for so important a change, as that now proposed, not only in the general law of contract, but in the special provisions of the rent law on the subject. But the grounds of the proposed change have, I think, been somewhat misunderstood. Act X of 1859 introduced for the first time the ryot's power of contracting himself out of the rights which the Regulation conferred upon him. The results of this provision, as of most others in that deplorably ill-considered enactment, were unforeseen by its authors. They believed themselves to be confirming the resident ryot in his rights, and opening the door to other ryots to acquire such rights. They were, in reality, putting several most formidable weapons into the hands of the landlords for the destruction of all rights whatsoever. One of these was the rule which was understood as making occupancy rights depend on 12 years' continuous occupation of the identical plot. Another was the provision allowing contract to defeat the provisions of the law. This latter provision the evidence shows to have been employed with disastrous effect. Whether it be from ignorance, stupidity, inability to look forward, or the habit of submission to a powerful landlord, it is incontestable that the kabuliyats obtained by the landlords from the ryots are, in a large number of instances, such as it is inconceivable that any rational man, with a due knowledge or his rights and an independent will, should be induced to sign. How these documents are obtained, whether by force or fraud, we have no means of knowing; but they must be due to one source or the other. To take one conspicuous instance, the recent Mymensing dispute, I was informed by an official, a strong advocate of the landlord's interest, who had himself carefully examined the entire file of papers, that he was perfectly satisfied that the great mass of kabuliyats, on which the quarrel turned, had not been *bonâ fide* executed by the ryots, but were either forgeries or in some other way improperly obtained. Now, to tell an illiterate peasant, whose income is perhaps Rs. 20 per annum, who is heavily in arrears to his landlord and the mahajun, that it is open to him to contest such a document on the grounds specified in the Indian Contract Act, appears to me a sort of practical joke, which, unhappily, has been frequently perpetrated by the Indian Legislature, but of which, every one is by this time heartily sick. The reasons for invalidating certain classes of contracts between landlord and tenant in England and Ireland are perfectly familiar, and they apply with still greater force in India. Speaking generally, the tenant and the landlord in this country are not sufficiently on the same level of knowledge or resources to make it possible for them to contract with that full understanding and independent will that are the essential ingredients in a valid contract. In the absence of these, any form of contract is a farce, and the law should prohibit farces wherever it is possible to do so. The section does not specify whether the intention is to invalidate all contracts within its scope, or only those made subsequent to the Act. In the latter case, effect will be given to a large number of contracts which, during the last two or three years, have been effected by the landlords in contemplation of the Act. On the whole, I am satisfied that, if all the provisions of the Act are not

to be rendered nugatory, a most stringent restriction on the power of contract is necessary. It seems questionable, however, whether the rule might not be relaxed so as to meet cases, such as those of indigo planters or wealthy ryots, in which the facts negative the possibility of oppression or undue influence, and the inability to contract would be found highly inconvenient. In such a case a proceeding before the Collector might be had to certify the competence of the parties. The relaxation, however, should, in my opinion, be kept within very narrow limits.

**74. The non-occupancy ryot.**—We next come to the case of the "non-occupancy" ryot. It is admitted that his position under the Bill will be far stronger than it is at present. Every non-occupancy tenant in possession will be exempt from enhancement except by a registered agreement or an agreement tendered to him through the Court under the provisions of section 60. If the ryot accepts the rent so tendered, or a rent which the court considers fair and equitable, he is safe from enhancement or eviction for five years. The court, in considering what is "fair and equitable" will have regard to the rents paid by similar tenants in the vicinity; but in no case must the rent be enhanced by more than 50 per cent.

**75. Grounds of ejectment.**—The non-occupancy ryot in possession can be ejected only by a decree given on the ground either—(*a*) that he failed to pay an arrear, or (*b*) that he has used the land in a manner to unfit it for the purposes of the tenancy, or broken a contract which by the contract involved liability to ejectment—and then only subject to the provisions for remedy or damages, in lieu of ejectment, contained in section 170; or (*c*) on the expiry of the term specified in a registered lease, if notice to quit has been served not less than six months before the expiry of the term; or (*d*) that he has refused to agree to a rent determined to be fair and equitable under section 60.

S. 98.
S. 58.

**76. Improved position of non-occupancy ryot.**—These sections give, and are obviously intended to give, a considerable degree of fixity to all existing tenancies. All grounds of ejectment, except the four specified, are taken away, and no one of these four afford the landlord the liberty of dealing in any degree as he will with the land. With a new tenant he can indeed fix what rent he pleases, but there his freedom ends. Unless in the case of a registered lease, he can, practically, never get rid of the tenant so long as the tenant either conforms to the terms of the lease, or pays the damages decreed for its breach, and submits to such enhancement as is found by the Court to be "fair and equitable" with reference to existing rents in the neighbourhood. And the provision as to the registered lease will not apply to cases where the lease is executed with a tenant already in occupation, because there is an express provision that he is not to be deemed to be "admitted to occupation by the lease, although that may be its purport."

S. 60.
S. 61.

There can be no doubt that these provisions will be felt to work extremely harshly by the class whose existing rights they curtail. They will give a fixity of status to a large class of tenants, who do not at present enjoy it, and who in many cases certainly did not contemplate it when the tenancy commenced. It is, probably, the most violent interference with private rights which the Bill contains. The question is, can it be justified? The answer must depend on the view taken of the contention now advanced by extreme advocates of the landlord interest, *viz.*, that, whatever may be the position of the occupancy ryot, as regards non-occupancy ryots, the landlord's rights are absolute, and interference in any shape is unjustifiable. The general considerations which must govern this point, and which show such a contention to be unsustainable, have already been considered.

**77. Proposal of the Rent Commission and original Bill.**—The Rent Commission dealt with the case by restricting the landlord's power to evict tenants of more than three years' standing. They recommended that the evicting landlord in such a case should be bound to pay the ejected tenant a year's improved rent, besides compensation for improvements. This proposal was not generally approved, and the Bill, proposed by Sir A. Eden, put no restriction on the landlord in his dealing with non-occupancy royts, save one, which was a provision limiting the rent in every case to ¼th of the gross produce. The Bill, as introduced into the Legislative Council, reverting to the proposal of the Rent Commission, affixed a practically prohibitive penalty—ten years' rental, to eviction by a landlord who refused to let his tenant sit at a fair rental. The proposal of the Bill as amended by the Select Committee, is to leave the initial rent to the agreement of the parties, but to give all tenants, except those whose tenancy commences with a registered lease, a status falling little short of occupancy rights.

**78. Proposal of the Bengal Government.**—The proposal of the Bengal Government is somewhat different from the Bill. The Lieutenant-Governor regards all initial limitations on the rent and all direct attempts to restrict enhancement as vain, and the action of a lease, such as that contemplated in section 60 (7) as likely to be injurious, as stopping the accrual of occupancy rights. It appears to me, however, that it is the intention of section 60 (7) that, when a ryot gets the right to stay in for five years under that section, occupancy rights may meanwhile accrue. The only method in which, in the Bengal Government's opinion, the non-occupancy tenant can be benefited is by providing adequate compensation to the tenant who is evicted though ready to pay what the court regards as a "fair and equitable rent

regard being had to all the circumstances of the case, the capacity of the land and the condition of the ryot." If he refuses to pay this "judicial" rent, he should be ejected; if he agrees to pay it, he should, if his landlord insists on ejecting him, receive as compensation one-fourth of the judicial rent for each year in which he has been in occupation up to a maximum of five years' purchase. This proposal proceeds on the simple basis that a ryot who is in occupation of the soil, and is ready to pay a fair rent, has a right to stay there, and that from the historical point of view non-occupancy rents ought not to be higher than occupancy rents. The Lieutenant-Governor holds it to be established that while "the pergunnah rates existed, no class of tenant paid a higher rent than that allowed by it, and even now in parts of the country where ryots are strong, it is often the non-occupancy ryot who pays the lower rent. It is an accordance with the general feeling of the community which condemns capricious evictions as unjust and oppressive; and it would operate, not in the case of the real zemindars of the province, who do not, as a rule, evict, but in the case of subordinate landlords, newly enriched purchasers and middlemen, whose severe dealings with the cultivator are not sanctioned by public opinion or general usage. It is urged, moreover, that as the landlords gain under the Bill considerable facilities for enhancing the rent of the great majority of their tenants, they may reasonably consent, in the case of the other portion, to a curtailment, which will not in fact, interfere with what is the usual course of dealing on well-managed estates.

**79. Bengal Government's proposal considered.**—It is in vain to hope that this proposal will meet with acceptance at the hands of those who regard the landlord's ownership as legally absolute so far as non-occupancy ryots are concerned, and who denounce any attempt to interfere with it as an indefensible invasion of private rights. It is only to those who adopt the view that the resident ryot has, by the law of India, rights of some sort, though they have been too often obscured in practice, and that it is essential, in the interests of the community, to rehabilitate him in those rights, that the present proposal will seem even open to discussion. I have already considered the grounds which seem to me to prove that such rights exist, and must, if we are to escape general agricultural destitution, be preserved. The danger towards which India seems to me to be drifting is that of the country becoming a huge *officina*, in which millions of human beings will be competing ineffectually in a desperate struggle of existence, living chronically at the lowest point compatible with continuance of life and sinking, at the first additional pressure, below it. To avert this consummation, it seems to me essential to take every step to keep the standard of life and comfort as high as possible, and, where occasion offers, to raise it. With this object I would interfere—even at the cost of checking that immense desideratum, the growth of Indian manufactures—in order to prevent manufactures being carried on in a way to involve suffering and degradation to the operatives and, with a like view I think the Government should say—as according to the law of India, I believe that it always has said to the landowners—"You have been constituted by Government the nominal owners of that which is to the many millions of India the exclusive material of existence; but your ownership is not absolute: we will not allow those millions to be at your mercy; we will not leave the cultivator of the soil, defenceless as he is, to fight his battle with you on the ordinary ground of contract. In such a battle he is certain to suffer; unrestricted competition will drag him down into degradation and ruin, which will, eventually, be your ruin too. In your interest, no less than his, we exercise the duty and right, solemnly recorded in our written law, to interfere for his protection." Assuming this to be the attitude of Government is the provision that the actual occupant of the soil shall be entitled to sit at fair rents and unreasonable concession? We have seen what the position of the resident ryot was before Act VIII of 1859, and how it has deteriorated owing to the unfortunate language of that enactment. Can the present proposal be said to do more than establish the state of things which the authors of that Act believed to be the law of the land, and intended to preserve? I think it cannot; and believing this I sincerely trust that the proposal may commend itself to the judgment of those by whom this all-important question will have to be decided.

**80. The Sub-ryot.**—The case of the sub-ryot is, for several reasons, the most difficult of any with which the Bill deals. On the one hand he has no historical status whatever, being the outcome of the beneficial rents at which various classes have been allowed to sit during the last century. On the other, if, in the beneficent language of the Permanent Settlement Regulation, the Government is most bound to protect those who, as being most defenceless, most need its protection, there can be no doubt that it is here that we come on an agricultural residuum, the class without resource and ready to accept from a landlord, who is often himself in straightened circumstances, any terms which he hopes (and too often hopes wrongly) may prove compatible with his earning of the barest livelihood.

The inveterate tendency of the Bengali to sublet, which has exhibited itself in every other class, makes it quite certain that this class will increase as time goes on. Nothing is known about its numbers but that it is already large, and that in some parts, so acknowledge is the position of the sub-ryot, that his holding has a marketable value. The Bill has been criticized, and I think justly, for the practical abandonment of this class to its fate, and for leaving the solution of a difficulty and danger, which must every year become more serious, to be attempted by some subsequent Government. No Bill will be in any way satisfactory that does not look the existing, or immediately imminent, state of things fairly in the face, and provide the best means which can be devised for meeting it.

**81. Provisions of the Bill for Sub-ryot.**—The main provisions in the Bill, affecting the status of the under-ryot, are (1) that any person, who holds more than 100 bigahs and sublets any part of it, shall be presumed to be a tenure-holder (section 5); and that any ryot who, except in cases of disability, sublets more than half his holding, shall on registration as a tenure-holder, be deemed to be one, except that his liability to enhancement of rent will remain as before.

S. 5.

S. 37.

The object of these provisions is that, on the ryot thus becoming a tenure-holder, his sub-ryots may move up into the status of ryots, and enjoy whatever privileges the law confers on them as such, and be in a position to acquire whatever rights of occupancy could be acquired from an owner or tenure holder. I will not discuss them, because the Bengal Government, on grounds which seem very cogent, regards them as impracticable. It remains to consider whether the same object might not be attained in a more direct manner. The other safeguards provided by the Bill are—

(1) That the landlord of an under-ryot cannot demand from him a rent exceeding his own rent by more than 50 per cent. in the case where there is a registered lease, or 25 per cent. in other cases.

S. 62.

S. 98.

(2) That the under-ryot cannot be ejected except on decree and at the end of the agricultural year, and on a written notice served six months before the end of the year.

S. 63.

(3) That his rent will be payable in instalments, not more than four, prescribed by the Local Government, and will be subject to the same rules as to alterations of amount on alteration of area, payments and appropriation, receipts, deposit, decree for ejectment for arrears, illegal cesses, damages for unreasonable suit, and distraint, relief against forfeiture, and measurement, as are provided for other tenants. He is excluded, apparently, from the provisions as to compensation for improvements, surrender and abandonment. He will thus be generally in the position of a non-occupancy ryot, except that his landlord cannot demand more rent than 50 per cent. or 25 per cent., as the case may be, in excess of his own rent, that, subject to this, there is no restriction on enhancement; that he cannot claim compensation for improvements, and that he cannot acquire occupancy rights by continuous residence.

**82. Proposal of Bengal Government.**—The Lieutenant-Governor does not approve the restriction of the under-ryot's rent to a specified fraction of the ryot's own rent. Such a restriction, he says, would be easily evaded, and might, in some instances, produce hardship. In substitution he recommends a rule that in no case shall the rent of the under-tenant be more than $\frac{5}{16}$ths, or 31½ per cent. of the value of the gross produce calculated in staple food-crops. As His Honour also recommends the maximum of 20 per cent. on gross produce for the ryot's rent, the result would be that, supposing ryot and under-ryot to be rack-rented the ryot would be left with 11½ per cent. of the gross produce.

**83. Desirability of not deferring legislation as to Sub-ryot.**—This protection seems most inadequate, and, difficult as it is to devise any better means of protection, I cannot help hoping that it may be possible to do so. The authors of the Bill recognise the possibility that the powers of transfer and sub-letting, which it confers "may in time lead to a state of things in which the great bulk of the actual cultivators would be, not occupancy ryots, but under-ryots, with but little protection from the law;" but they say, "if such a state of things should ever arise, we may rest assured that the Government of the day will know how to deal with it." This appears to me a most lame and impotent conclusion of the enormous labour which has been, for several years past, bestowed on the subject. The policy of leaving to posterity to dispose of difficulties, the way through which is not apparent to ourselves, is surely one which the experience of this subject, if any in the history of Indian administration, condemns. We are now endeavouring, with the utmost difficulty, at the cost of much antagonism, class-feeling, animosity, alarm, and, I fear, of giving sore offence to the great body of proprietors in Bengal, to repair the mischief occasioned by the incomplete character of Lord Cornwallis' legislation. The reforms which cost such a struggle now might have been carried then without an effort, in fact, were believed by him to have been carried. Certain points were known to be obscure, and Mr. Shore urged that legislation should be postponed till the measure could be rendered more complete. Lord Cornwallis, however, resolved to go on, resting no doubt in the comfortable assurance that, if the protection afforded by the Regulation proved, in any case, insufficient, "the Government of the day would know how to deal with it" But has that assurance been justified? Did the authors of Act X of 1859 know how efficiently to remedy the defects of the law? or does any one now, after several years of enquiry and discussion, feel any real confidence as to the efficacy of the remedy proposed for a state of things, which is agreed on all hands to be full of danger and anxiety? The history of the case seems to me to point strongly in the direction of the desirability of dealing with the subject in a thorough, far-seeing manner, taking into account the tendencies which we know to be at work, and the results that the measure is likely eventually to bring about. Any measure which leaves the actual occupant of the soil to make the best fight he can, will, in my opinion, be a failure from the first, and will become a more signal failure every year it lasts, because the class, which it fails to protect will, year by year, become larger, its need of protection more pressing, and the consequences of the absence of protection more conspicuously disastrous. If our object is to have a substantial peasantry in occupation of the soil, how do we promote it by conferring, at

the cost of the zemindars, all sorts of privileges on a class of persons, who are themselves often considerable landlords, and not at all likely to use these rights as landlords more sparingly than the zemindars? I agree with Mr. Justice Field when he says: "I can see no reason why the proprietary interest of the zemindar should be injuriously affected by legislation for the benefit of a middleman, while the corresponding interest of the same middleman is protected, to the detriment of the actual cultivator of the soil under him. On what principle could it be contended that the portion of a Rungpore jotedar, who holds 1,000 beegahs of land, 50 or 100 of which he cultivates himself, while he sublets the remaining 900, should be protected as against the zemindar, while the tenants of the 900 beegahs, who are the actual cultivators of the soil, and who are as much deserving of care and protection, as the jotedar himself, are left more at his mercy than he is left as regards the zemindar?" The necessity of protection is, indeed, often greater, because the middleman is a smaller, and, therefore, a more grasping and tyrannical landlord. The question is, how can this protection be afforded?

**84. Proposals as to sub-ryot considered.**—One proposal is to allow of occupancy rights being acquired only over an area sufficient to maintain the ryot himself and his family; another is to provide that, with respect to any portion which the ryot sublets, the tenant shall acquire, as against him, the same rights which he would against a proprietor, subject, of course, to the proprietor's superior right. This latter proposal seems, at any rate, in harmony with the general spirit of customary law in India, which has always tended to give the actual occupant of the soil something less precarious than a mere tenancy at will. It is, obviously, a historical accident that the ryot be the one landlord whom the law leaves unfettered in his dealing with his tenants, while it imposes every sort of restriction on the zemindar and tenure-holder. It is an anomaly, that ought not to be allowed to remain. On the other hand, we need feel no scruple in imposing restrictions on the ryot, because, in his case at any rate, there are no vested interests; his power of subletting will be now, for the first time, recognized by the Legislature. The object in protecting the occupancy ryot is to make a substantial tenant, not to make a new class of landlords, less unfettered, less respectable, and, presumably, less considerate than those already in existence. I would, therefore, instead of section 87, substitute a provision that, immediately the ryot sublets, he should become liable, as regards his tenant, to whatever restrictions the tenure-holder is liable to as against his. This would give the under-ryot, in addition to what the Bill now gives him, the benefit of the restrictions on enhancement, the right to compensation for improvements, and the power of acquiring occupancy rights. I should be inclined to cut down still farther the margin between the rent which the ryot pays, and that which he may demand. A man who can get 10 per cent. of the gross produce of land by simply subletting it, is likely to regard that as the best thing he can do with it. This is just what we want to discourage. The object is to prevent middlemen from buying occupancy rights for the purpose of subletting them at a profit. Why should this object not be effected directly by providing that, except in cases of disability, the ryot cannot demand a higher rate than he pays? This would put an end to the middleman's business, and replace the occupancy right on its original proper footing as a protection to the occupant of the soil, not the creation of a fresh and unrestricted class of landlords.

**85. Codification of the entire subject desirable.**—To pass from matters of substantive law to questions of form and structure, I would venture to suggest that the Bill, though, for the most part, accurately drawn, is susceptible of improvement in scope, language and arrangement. In the first place, the determination not to follow the Rent Commission in its attempt to make the Bill a Code, mentioned in clause 10 of the Statement of Objects and Reasons, is, in my opinion, much to be regretted. The new Act ought, I think, with all deference to the contrary view expressed by the Select Committee, to be "a complete and self-contained statement of the whole law" on the subject; nor do I see why, because attention is mainly directed to certain important amendments of the existing law, the opportunity should not be taken for codifying the entire law on the subject. When is it probable that the law will be better known and more thoroughly and generally understood than at present, when so many officials have been studying and considering it for several years, and when the numerous excellent reports and memoranda, issued by the Government, Commissions, or individual officials have thrown so much light on every portion of it,—when the Government of India has formally placed before the Secretary of State an elaborate statement of its view of the whole subject, and the Secretary of State has expressed his opinion on that statement? All the cogent reasons, which have determined the Government to persevere with the codification of other branches of Indian law, are at least as applicable to this part of the law as to any other. The Government of India* is fully alive to the serious evils which have arisen from the misapprehensions occasioned by the incomplete form of Act X of 1859, and from that enactment, intended by its authors to be an additional enactment, being understood by the courts as an exclusive enactment. It is, moreover, a matter of real administrative importance that the law as to landlord and tenant should be so clearly and concisely stated as to enable the officials, who are called to deal with it, to get a clear and comprehensive view of it. It is in the interests of all that ambiguities and obscurities should not be left for suitors and advocates to wrangle over, and the courts to spend precious hours in endeavouring to elucidate.

* Despatch of 21st March, 1883, section 51.

**86. Amendments in the drafting of the Bill: Preamble.**—I regret the omission of the preamble which appeared in the draft No. 437 of 17th January 1883. Considering the perti-

nacity with which the opponents of the Bill have denied all the main legal grounds on which the right of Government to legislate depends, and have taken their stand on the assertion of absolute proprietorship conferred on the zemindars by the terms of the Permanent Settlement, it seems to me well worth while to assert those grounds in an unmistakeable manner, to show, at the outset of the Bill, that the Government takes *its* stand, too, on the Permanent Settlement, and is acting unquestionably well within the letter and spirit of the regulations when it legislates in any way it thinks right for the benefit of the ryots. I should be disposed to add words to the effect that, from the time of the Moghul Government, it has been a recognised maxim that the immediate cultivator of the soil, duly paying his rent, should not be dispossessed of the land he occupies, and that the amount of this rent should not be left to the arbitrary determination of the zemindar, but should be ascertained and fixed by the Sovereign Power.

**87. Illegal exactions.**—I should have thought also that more prominence, emphasis and exactness should be given to the provision contained in section 85 as to abwabs and other illegal imposition. In one sense it is the key-stone of the Bill. The framers of the Permanent Setlement Regulations were fully alive to the fact that all precautions, by way of limiting rent and otherwise protecting the tenant, were vain unless collateral exactions were prohibited, and the landlord rigidly bound down to the rent reserved in the pottah. This section refers to certain impositions known as abwab, mahtut, &c., but is it clear that it forbids the landlord to levy a fine on admission, to contract with the tenant to pay cesses, &c.? I observe from his speech in Council that Sir S. Bayley seems to contemplate that the landlord will levy a fine on admitting an occupancy tenant; but if he can, what difference is there between paying the additional rental in a lump sums, or paying it year by year, except that the former is the more oppressive to the tenant, and the more fatal to the chance of his being able to do justice to the land? The suit provided in section 86 is a very old contrivance, the uselssness of which experience has conclusively established. It would be far better to empower the Magistrate to impose a fine in any case in which he becomes aware of such an exaction. The section should, in my opinion, provide that, wherever a maximum rent is specified, any attempt to evade that restriction by an initial payment, and, in every cases, the exaction of any payment beyond that specified in the lease, or recorded at the registrar's office should constitute a criminal offence, and that the criminal court trying the case, should order re-delivery of the payment so made.

**88. Arrangement and language of the Bill.**—To pass to minor questions of drafting, the Bill ought to state, at the outset, the limits of its application; but it is not till we get to its concluding sections that we learn what those limits are. Chapter XVII, for instance, it seems to me, ought to come as part of section 2. It provides for the cases in which contract shall not override the Bill, and for various cases in which the Act shall not apply, and for various cases in which custom is to govern the case. The same observation applies to section 228, which defines the limits, within which the Government, in its capacity of landlord, will be subject to the Bill. The language of the Bill, in many instances, moreover, leaves much to be desired. The definitions of "tenure-holder" and "ryot" are not exact; that of "tenure-holder" would include a mortgagee in possession or an agent—and omits, as several critics have pointed out, the fact that the tenure-holder often has more than a mere right to collect rents. Section 64 is inconsistent with section 6. Such phrases as "contracts for the reclamation of waste land" in section 212 will, I fear, prove to be a mine of litigation. So will section 213 as to "chur" land, and section 215 as to service tenures. Section 216, as to homestead land, disposes of a most important branch of the subject in five lines, and, as might be expected, in a wholly inadequate manner. Sections 225 and 226 provide important modifications of the rights of enhancement which ought not to figure in a "supplemental chapter" along with "penalties," "power to make rules," and other like topics. Section 227, again, appears to imply that "anything payable or deliverable in respect of rights of pasturage, forest rights, fisheries, &c., is not rent. Section 228 leaves in some obscurity the extent to which the Government intends to exempt its own proceedings, in the capacity of landlord, from the operation of the Act. Clause (*b*) of that section is inconsistent with the repealing section and Schedule I. The Bengal Government says that the result of the definition of "estate," and the other provisions of the Act, is that the only advantage which Government intends to retain over the ordinary zemindar is that afforded by the "Certificate" Procedure. If that is so, it would be well to make it clear at the outset. Few people reading section 228 would suppose this to be the intention. Section 228 provides that nothing in the Act shall affect certain enactments, some which section 3 repeals. Section 210 leaves doubtful the question, whether it is intended to affect all contracts of the classes, or only those made since the commencement of the Act. These and other like points will, doubtless, be considered and remedied when the Bill is recommitted to the Select Committee. I refer to them as indicating that, in my opinion, such reconsideration is indispensable.

**89. Recapitulation.**—In the foregoing paragraphs, I have endeavoured to consider with care, and to state with some approach to exactness, the main outlines of the problem, of which the present Bill is the attempted solution. It may be convenient to recapitulate the principal conclusions which it has been my object to establish. They may be summarized as follows:—The physical, social, and economical conditions of Bengal are such as to render inevitable the growth of a dense agricultural population, whose increasing numbers must continually add to

the difficulty of existence. That difficulty does, in fact, in many parts of the Province, already exist in a somewhat acute form. The profits of the soil, to a share of which, specified by itself, the State was, by the immemorial law and custom of the country, entitled, are now divided between the Government, which receives 3½ millions sterling, 150,000 proprietors, and a million tenure-holders, who receive something over 17 millions, and 10 millions of ryots, who are the tillers of the soil and live on its products. The rights of each of the three latter classes were, at the time of the Permanent Settlement, defined with accuracy, and placed, as the framers of that measure believed, on an equally secure footing, the object being that all alike should enjoy, with equal assurance, the advantages resulting from the surrender of its own rights then made by the State. The Government, at the same time, solemnly announced that this surrender in no way impaired its constitutional right of interfering, whenever it deemed necessary, for the protection of every class of agricultural tenant or its intention of doing so. While the rights of the landowners, under this settlement, have been preserved with exactitude and completeness, the privileges accorded to the ryots have, from various causes, become obscured, and, in many cases, have fallen into abeyance. A large proportion of the tenantry, however, estimated at between 70 and 90 per cent., enjoy occupancy rights. The position of the rest, as well as of the tenants to whom these occupancy tenants sublet, is unsecured by legislation, and shows a dangerous tendency to the consequences of unrestricted competition. Legislation, which was undertaken in 1859 with a view of affirming the privileges of the resident ryot, and of enlarging the definition of occupancy rights, has subserved an altogether opposite purpose, and proved a powerful instrument for the destruction of occupancy rights. The Act has been, and is being, extensively employed for this purpose: in parts of the Province occupancy rights are on the high road to extinction. As competition increases, and the value of land rises, this tendency is likely to intensify. General poverty in one part of the Province and agrarian troubles in another attest the presence of unhealthy relations between landlord and tenant and the necessity for legislation. The facts of the case and the opinions of the best-informed advisers as to the remedies for which they call, have been made, for several years past, the subject of a research more prolonged, more patient, exact and thorough than any known in the annals of Indian Administration. In the course of the investigation certain conclusions have been arrived at, and certain principles have been agreed upon, by the Secretary of State and the Government of India, as shaping the course of the forthcoming legislation. Those conclusions and principles are supported by as weighty a body of official opinion as was ever brought to bear upon a great administrative question. They are in general accordance with the recommendations offered by the Famine Commission, after two years' elaborate enquiry into the condition of the agricultural classes, and with the deliberately recorded opinion of successive Lieutenant-Governors of the Province. The proposed course of action has given surprise and annoyance to landlords, who were fast losing sight of the constitutional and legal restrictions by which the ownership of land in India is surrounded. The natural resentment at an unwelcome curtailment of rights, believed to be absolute, has unfortunately been fostered, alike by contemporaneous political events and the unhesitating advocacy of allies to whose co-operation and sympathy great importance was, with good reason, attached. This state of things, while it enhances the difficulty of a peaceable solution, renders it imperative on those who disapprove of that advocacy, as founded on an incorrect historical view and an unsound economical theory, to explain explicitly the reason of their dissent. With this conviction I have felt it my duty to lay before the Government, I fear, at wearisome length, the grounds on which I believe the proposed enactment to be perfectly within the legislative powers of the State, and to be calculated to promote the true interests of the classes whom it concerns.

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Dated 27th October, 1884.

From—Honorary Secretary, Bihar Landholders Association,

To—Secretary to Government of India, Legislative Department.

With reference to the Bengal Tenancy Bill as amended by the Select Committee of the Legislative Council, I have the honour to submit the following remarks:—

The survey clause is one of the most important clauses of the Bill, and, though alleged to have been drafted in the interest of the raiyats, it is about the only clause in the Bill which the raiyats as a body consider to be most objectionable.

The idea of a general survey-cess is totally repugnant to their feelings. Nor is this difficult to understand. They have been told that the survey-cess is going to be levied, but they are kept in the dark as to the mode in which this cess is to be levied; and it is perfectly clear that they will continue to object to the survey-cess till such time as they are furnished with the details. Is this cess to be levied throughout the whole of Bengal or only in those villages that will be surveyed? Is it to be made a permanent cess, or is it only temporary? These are the questions that are naturally raised by the raiyats. They for the first time hear that it is proposed to increase the taxation further for paying the expenses of the Revenue officer's establishment in each district. This leads them to think that the survey-cess is proposed to be introduced chiefly to meet this heavy extra expense. Hence they think that it is likely to become a permanent tax.

It need hardly be stated here that the zemindars take objection to this clause on precisely the same grounds as the raiyats. Some years ago Sir Ashley Eden appointed a commission to enquire into the rent question in Behar. It was composed of civilians, lawyers and zemindars, all of whom had great practical experience of the manner in which the present rent law had worked.

But the Bihar Rent Commission never proposed the idea of having a general survey. This in itself is a conclusive argument against this most objectionable chapter.

It might here be mentioned that the raiyats do not need Revenue officers to protect their interests, nor have they made any such request to Government. If this survey is legalised, it will inevitably lead to immense litigation. Act VII of 1876 was passed to compel the zemindars to register their rights in the Collectorate. Eight years have passed since then, and there are still some *dakhil kharij* cases remaining undecided, though the Act has been in operation for years. The zemindars, however, represent only a very small proportion of the community, and if a period of eight years is not sufficient to procure the record of their rights, even one hundred years would be insufficient to record the rights of raiyats who form nearly the whole population of Bihar.

As an instance we might cite the instance of many partition cases. In these cases every field in the estate has to be measured and assessed, but we find that, even with special Batwara Deputy Collectors in each district, it sometimes takes as much as twenty years to get an estate partitioned. How much more difficult would it then be to measure a whole district in a short space of time? As a case in point I would refer you to the Batwara of Darbhanga which seems likely to last as long as a Chancery suit under Lord Eldon.

The zemindárs and raiyats are both content with the present state of things. In those cases, where there is a dispute about the area of a holding or the classification of its land, the Civil Court has the power to depute an officer to measure and classify the holding. The interested parties should be made to pay the expenses. Nothing beyond this is needed. Why should those raiyats who are not likely to derive the slighest benefit from the measurement be made to pay for the possible benefit of others?

Is this survey cess to be collected by the zemindárs, as in the case of the road and public works cesses, or by the Government? In the first case, are the zemindárs whose powers of realizing rent practically crippled by the proposed Bill, to be compelled to suffer on account of the non-realization of this cess from the tenants?

Is it fair to make the zemindárs responsible for the collection of any cess from the raiyats? Is it fair for the Government to appoint any one as a tax-collector without his wishing to act in that capacity, and is it just to make the property of the tax-collector liable to summary sale for the arrears of the tax-payer?

Surely these are not the principles by which the English Government is supposed to be guided in its administration of the Indian Empire?

If, on the other hand, Government wishes to collect the tax direct from the raiyats, through its own agency, it should let the raiyats know the procedure it wishes to follow in realizing this cess. Does it wish to make the properties of raiyats liable to summary sale, or simply to work with the same agency as the zemindars, namely, that of the Civil Courts only? All these questions ought to be answered and put before the raiyats in a clear and categorical manner.

Taking the Bill as a whole, it appears to the Association to be an unnecessary and mischievous measure. The objections to it have been most ably stated by Mr. Henry Bell in his pamphlet "the Restoration of the ancient Land Law, or the Ilbert Bill No. II." I have no desire to go over the ground which has already been traversed by a gentleman so thoroughly acquainted with this important subject, but I would refer you to the events which have taken place since Mr. Bell's pamphlet was published. The Chief Justice of Bengal has issued an able minute condemning the Bill in most unqualified terms He is followed by Mr. Justice Field, an able and learned jurist, who has made the rent law his special study. In a calm and judicial minute, Mr. Justice Field simply tears the Bill to pieces. I would refer you to his concluding paragraph, in which he briefly sums up his reasons for considering that the Bill ought to be thrown out.

Going from the region of theory into that of practice, I would ask you to note the following points: It has been asked by more than one writer on the subject why, if this Bill is such a beneficial measure, Government do not extend its benefits to the raiyats in the khas mahals and estates under Court of Wards? This is a fact which in itself speaks volumes; but, when we find (as has recently been shown in the Mednipur rent cases) Government enhancing its raiyats' rent in some cases as much as 300 per cent. and passing an Act with retrospective effect to legalise and enforce this enhancement, zemindars are tempted to wonder why such heavy restrictions are placed on them.

It is notorious that the effect of the mere agitation caused by this Bill has been to unsettle the minds of raiyats, and to make them withhold payment of their rents under the vague notion that Government will soon transfer their *jotes* to them in absolute ownership. The result of this is that many zemindars, who were formerly well-to-do, are now reduced to utter distress. On the one hand, they find their incomes suddenly cut off; on the other hand, they must some how find the money to pay Government revenue before sunset of the appointed day on pain of having their ancestral estates summarily sold by auction.

If the Bill become law, the evils which I have endeavoured to point out would be increased twenty-fold. Abolish all freedom of contract and existing contracts, and give occupancy-

raiyats absolute freedom of sale, and the very class whom it is sought to benefit would in a very few years become the bondsmen of the *mahajan* and the *mokhtar*. They will be egged on to engage in litigation with the zemindár who has befriended them in seasons of want or distress: their natural extravagance and thriftlessness will be encouraged to the uttermost, until they will be compelled to mortgage or sell the *jotes* which they and their forefathers have held for generations past, and they will ultimately become mere serfs on the land which they once tilled. That this is not a fanciful picture is shown by the Resolution passed by the Lieutenant-Governor, Mr. Rivers Thompson (himself an advocate for the Bill) on the Annual Report on the Sonthal Parganas for 1883, published in the supplement to the *Calcutta Gazette* of 23rd July last. The privileges of free transfer were bestowed upon the Sonthal Parganas with the exception of the Damun-i-koh. In 1878 Mr. John Boxwell (another advocate for the Bill) reported that "instead of borrowing money, which I presume was repaid when their crops were reaped and sold, the cultivators were selling their holdings." In 1881 and 1882 it became known that these sales had largely taken place, *and that in many cases the Sonthals were working as labourers on lands in which they had formerly held rights.* Moreover these changes had all occurred "in the years since 1876, *all distinguished, not only by good harvest, but by prices most favourable to the producers.*" These words speak volumes. Now mark the result. Mr. Oldham, the Deputy Commissioner, writes:—"I was followed by crowds clamouring for the restoration of their lands and complaining that they could get no advances. Were the buyers fellow-tenants or even proprietors intent on merging tenancies, there would be nothing to be said. But they are not. They are all either Bengali traders and money-lenders from Birbhum and Burdwan, or the far more dangerous class, Bhagut traders from Bajpur.

Though Mr. Rivers Thompson attempts to combat this latter assertion, he is compelled to admit that the figures for 1883-84 are 691 sales to money-lenders and 1,932 to raiyats. The purchases of holdings by the zemindars themselves are very few. His Honor goes on to remark:—"It is of the utmost importance to the civil administration of the Southal Parganas that the Sonthals should retain possession of their lands. The growth of a large class of Sonthali labourers working for interlopers on lands once their own must be checked by every legitimate means as being *dangerous to the peace of the country*, and of benefit only to a few individuals who are actuated in their dealings with the people by mere mercenary motives, and who consequently are the greatest obstacles to the prosperity of the country."

These are wise and true words. Here we have an instance of the disastrous effects resulting from "free transfer" being established in a small part of the provinces administered by the Lieutenant-Governor, and in the face of this it is proposed to establish this mischievous principle throughout the length and breadth of these provinces. On the subject of subletting, one of the members of the late Rent Commission said:—"The utmost rackrenting is to be found when the right of occupancy falls into the hands of mahájans (money-lenders) or other persons who do not cultivate themselves, but sublet to *korfa* raiyats (actual cultivators). The Famine Commission refer to the same subject in the following terms:—"The question of subletting seems to us of even greater importance. The more valuable the occupancy-right becomes by reason of such measures of protection as we have advocated, the more need there will be of guarding against a custom, which is everywhere prevalent in India, under which the privileged tenant is apt to turn into a middleman subletting the land, and living on the difference between the rack rent and the privileged rate secured to him by the law. The occupancy-right can only be beneficial to the community when enjoyed by a *bonâ fide* cultivator, and the object of the law should be to prevent any one who is not a *bonâ fide* cultivator from acquiring or retaining such right."

The custom of subletting is not so generally prevalent as it is assumed in the above extract; but the provision of the Bengal Tenancy Bill, if passed into law, will intensify the evil tenfold.

Mr. Tobin, in his enquiry, found that where subletting was allowed by custom, as amongst the *guzastha* raiyats of Shahabad district, the raiyats sublet their rights at from twice to ten times the rates of rent they do pay.

On the subject of commutation of produce-rent, I have simply to draw your attention to the opinion of one of the most experienced officials of this Division. Mr. Halliday, the commissioner of the Division, says:—"On the question of commutation of *bhaoli* rents in Bihár, it would be most inexpedient to adopt more active legislative measures for the commutation of these tenures. I not only believe that great mischief could be done if commutation were hastily or rashly carried out, but I think further that in this respect we should leave matters alone. I am sure that it is a right acceptation that lands on which a money-rent has once been introduced are not likely to be held *bhaoli* again. Our experience in the settlement of the Gya escheated lands, recently undertaken, shows that the raiyats almost invariably opposed the commutation of the system of *bhaoli*, notwithstanding the specially favourable terms proposed, and my belief is that in these cases an offer of re-commutation would certainly be accepted. * * * I would not confer by direct legislation any power in the zemíndár to force commutation on the raiyats, but neither would I give the raiyat the exclusive right to force commutation on the zemíndár."

Mr. Halliday continues:—"The special condition in the Bill, that the raiyat's application for commutation must include all the *bhaoli* lands of his holding, will not be looked upon by the raiyat as an unmixed blessing to himself. The restriction which is considered necessary in the

interest of the zemíndár will as a matter of fact make the provision of the law a dead letter, and things will in reality remain much as they now are. The raiyat would probably only require commutation for the best land in his holding, while the zemíndár would strive for the reverse, and the condition in the present Bill will not satisfy either party. But supposing the commutation principle of the present Bill be adopted, the deductions proposed in the last clause of section 90 will not be altogether fair upon the zemíndárs. The conversion of one or two or even of several holdings of raiyats in an estate will not relieve the landlord from the expense and responsibility of maintaining the village irrigation-works to the same extent as before, if he did not wish to loss all prospect of profits from the remaining *bhaoli* tenures. The irrigation works then being maintained by the zemíndár as before, it would not be difficult for the raiyats whose *bhaoli* tenures had been changed to money-rents to avail themselves surreptitiously or by force of the benefits of the zemíndár's irrigation works. These holdings should be scattered all over the village amidst other holdings not so converted, and it would be simply impossible for the zemíndár to prevent the one set of raiyats from reaping the advantage of irrigation designed for the other set. All this must certainly be taken into consideration from the zemíndár's point of view. I used above the expression *by force*, because it must be remembered that the zemíndár of Behar has not to deal invariably with only the unresisting helpless raiyat, the so-represented typical cultivator of Behar. There are Bráhmans, Bábhans, Rájputs and Muhammadans, who as raiyats are perfectly capable of maintaining their own interests, being thoroughly acquainted with the rights they possess under the law, and are also equally capable of combining powerfully against the zemíndár in the exercise of supposed rights which they may not possess under the law. These do not form by any means a small class, and must be taken into the calculation in determining the question of the commutation system."

For the reasons above stated, and for those so ably stated by the gentlemen to whom I referred, the Association desire me to record their protest against the Bill.

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No. 2201T.—R., dated 9th October, 1884.

From—The Officiating Under-Secretary to the Government of Bengal,

To—The Assistant in Charge, Legislative Department.

1. Letter No. A., dated 22nd September, 1884, from the Munsif of Mozufferpur.
2. Letter No. 1672G., dated 23rd September, 1884, from the Officiating Collector of Shahabad.
3. Letter, dated 22nd September, 1884, from the Honorary Secretary, Orissa Association.
4. Letter, dated 16th September, 1884, from the General Secretary to the Behar Indigo Planters' Association.*

* Not printed. Already circulated as papers No. 54.

In compliance with the request made in a telegram, dated 1st October 1884, from Mr. Fitzpatrick, I am directed to forward copies of the papers noted on the margin, relating to the Bengal Tenancy Bill.

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No. A., dated 22nd September, 1884.

From—The Munsif of Mozufferpore,

To—The Secretary to the Government of Bengal.

With reference to your circular No. 9T.—R., with enclosure, I have the honour to submit that the procedure sections of the Bill require no modifications just at present. They seem to be workable, and the finality given to judgments in petty cases meets with approval. In my humble opinion the filing of boundary with the plaints should not be made compulsory. Petty suits to recover arrears of rent (in which the jamá is not disputed) should not be made complicated by questions about correctness or otherwise of boundaries of the lands the rent whereof is sought to be recovered. In such cases only the number of Government survey will suffice.

On enquiry from old-standing pleaders I learn that there is no local custom here recognizing any right in a raiyat to his holding occupied for *less* than twelve years. In my experience also I did not find the existence of any such custom. If the payment of rent is withheld, such raiyats are ejected by the zemíndár. But not so in the case of homestead or *gharari* and *bári* land, as it is called here. Such lands are generally rent-free, no ground-rent or *kathiari* being paid for it, especially in the case of high-caste men, such as Bráhmans, Rajpoóts, and Kayests. The low-caste people render some sort of service in lieu of payment of rent. But in cases in which homestead lands are rent-paying, the málik has not the power to turn out the recusant assamees without the aid of a Court of law. He has to sue them for arrears, and in execution of his decree to sell their houses, though this is seldom done. The *bastu* land is generally exempted when the occupancy-right in the *kásht* is put up for sale. But I do not think there is any well-established custom of the sort.

2. The Tenancy Bill has undergone material alterations, and the present Bill as re-cast and revised by the Select Committee is decidedly an improvement upon its predecessors. Throughout the Bill a desire to do even-handed justice to both the zemíndár and the raiyat is apparent, and every possible restriction to guard the poor raiyats from the oppression of their rich landlords seem to have been imposed. The provisions generally appear to be good and beneficial, but there are certain matters which call for comment.

*First.*—Clause (3) of section 5 seems to be defective. It does not include those raiyats who cultivate and hold lands in rent-free mahálś under settlement from lákhirájdar, jagírdár, &c., as also the tenants of those máliks who did not possess entire estates at the time of the Permanent Settlement, and whose mahálś therefore were made subordinate to the parent estate or zemíndárí in respect to the payment of Government revenue.

Section 5, clause 5, is open to objection. Thikádárs, mahájans, and land-jobbers can in collusion with refractory raiyats attain to this position of taluqdárs without any great difficulty, to the detriment of both the málik and the raiyat. That part of the definition of a "settled raiyat" which confers on a raiyat holding land (how infinitesimal soever it may be) continuously for 12 years the status of settled raiyat in regard to other lands of larger areas held for a shorter time, under a pattá even providing against the accrual of a right of occupancy, is objectionable.

*Second.*—Further restrictions should be imposed upon the raiyats' power of transfer. As a class of people, they are most improvident and thoughtless, and a marriage or a *saradh* will in no time convey wholesale all their lands either to the mahájan or land-jobber, and reduce them to the position of day-labourers. Again, the provisions of the Bill alone will not sufficiently protect the interests of the landlords against the refractory tenantry colluding with the málik's bitterest enemy solely for the purpose of annoying and harassing him. The pre-emption clause may, with advantage, be made applicable to all kinds of raiyats and tenure-holders.

*Third.*—The position and status of the *khudkásht* raiyats and of the tenants of málik's *zerait*, *sír* and *khamar* lands should be more clearly defined.

*Fourth.*—The rules laid down for enhancement of rent of occupancy-raiyats are rather intricate, and it is doubtful how far they will prove workable.

*Fifth.*—A long-felt want is attempted to be removed by the introduction of the chapter on "Record-of-rights;" but at the same time the contemplated work is sure to take a long time to accomplish. Moreover, it is feared that, like the Land Registration Act of 1876, it will prove a fruitful source of litigation for years to come, and to a great extent be the indirect cause of disturbing the friendly relations existing between the zemíndár and his tenantry.

*Sixth.*—The position of the patwárí should undergo some change. He should be either made entirely subordinate to the zemíndárs whom he serves, or be treated as a Government servant to all intents and purposes. Much mischief is done by his anomalous position. He should be made personally liable at least for preparing false and incorrect village-papers and granting false rent-receipts, and a zemíndár should not be made to suffer unless it is proved that it was done with his direct knowledge. The introduction of printed receipt-books with counterfoils and of compulsory pattás and kabulyats should be insisted upon.

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*Memorandum by Officiating Collector, Shahabad, No. 1672G., dated 26th September 1884.*

Copy forwarded to A. P. MacDonnell, Esq., with Mr. Nolan's compliments, with reference to Commissioner of Patna's memorandum No. 70R., dated 3rd instant.

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No. 1662G., dated 23rd September, 1884.

From—The Officiating Collector of Shahabad,

To—The Commissioner of Patna Division.

I perceive from your memorandum No. 70R., dated 3rd instant, that Mr. Forbes' proposal to introduce provisions in the Bengal Tenancy Bill for legalising underletting to indigo-planters is receiving special attention, and I request permission to record a few observations on the subject, the report of what I said at the Conference not correctly expressing my view.

2. I quite agree with Mr. Forbes that it is desirable to permit planters to obtain from raiyats with the least possible trouble land required for indigo cultivation. It appears to me that sufficient facilities are afforded for this by the Bill as it stands, the restrictions imposed by that measure on underletting not being apparently of a nature to affect indigo-planters. The limit of the period of sub-leases to seven years is of little importance to them, as the same land cannot be cultivated with indigo for a longer period, while the provision against excessive rents being realised through the Courts is of no importance practically, as planters obtain land not by giving high rents but considerable premiums. I should say that the planters would not attach any value to the proposal made in their supposed interests. If, however, it prove otherwise, and the planters press the point, I see no objection to the removal of restrictions on sub-letting for *bonâ fide* indigo cultivation, except the general objection to all class legislation, and it must give way to any economical necessity.

3. I also agree with Mr. Forbes and Mr. Norman in considering it undesirable that planters should, as under the *kartouli* system, take under-leases of lands they do not require for indigo merely to sublet them again to the original holders. It seems to me that the under-tenant of an occupancy-raiyat should not be allowed himself to underlet. Mr. Forbes, while disapproving of the *kartouli* system, remarks that in nine cases out of ten it is a defensive alliance between the planter and raiyat against the zemíndár; he might have added that the alliance is on such terms as to place the weaker party to it entirely at the mercy of the

stronger. I fear it resembles the fabled alliance of the man and the horse against stag, and would have the same result. *Non equitem dorso, frennen non depulit ære.*

4. What appears to me most objectionable is that restrictions on subletting should be removed all over these provinces merely for the sake of legalising a local practice affecting an area which, by comparison with the country as a whole, is insignificant.

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Dated 22nd September, 1884.

From—The Honorary Secretary, Orissa Association,

To—The Secretary to the Government of Bengal.

I am directed by the Orissa Association at Cuttack to submit, for the kind consideration of the Government, their own views and opinions embodied in the following paragraphs on the revised Tenancy Bill. This was originally proposed to have been submitted through the Commissioner along with his own report on the subject, but unavoidable circumstances, the Association regret, prevented it from adopting such a course. The opinions expressed below of the Association as regards the Bill refer mainly to its general principles and not to its details.

2. The Association recognises the necessity for amending the land law of Bengal and Behar with a view (1) to give increased facilities to the landlord for enhancement and easy realisation of arrears of rent, and (2) to give additional security to the actual cultivators of the soil in the enjoyment of the fruits of their own labour.

3. In the opinion of the Association the land law both as regards Government estates and zemindari mahals should be assimilated, especially as regards enhancement and realisation of arrears of rent. It does not see why there should be separate laws for the Government estates and the zemindari mahals to meet the same end. From an assimilation of this kind much good is expected, as it will have the beneficial effect of familiarising the local authorities with the real wants of both the rent-payers and rent-receivers.

4. The Association does not think it desirable to extend the proposed law to Orissa for the present at least, and is of opinion that if hereafter occasion arise for its extension in whole or part thereof, it should be done subject to legislative sanction. For they think it is unsafe to leave to the discretion of the executive Government extension of a law of such a paramount importance, involving the interest of the entire population of a province.

5. The whole of the province of Orissa is temporarily settled, and the next settlement is to come on within a few years hence. It is not therefore, in the opinion of the Association, desirable to make any change in the existing law of the country until that period.

6. The land-tenures of Orissa differ materially from those of Bengal and Behar, so much so that many of the provisions of the law under review, which can so well apply to the latter, may be deemed quite impplicable to Orissa at present. The Association, however, thinks that if necessity arises hereafter for the introduction of any of the sections of the law into Orissa, they might be introduced under legislative sanction.

7. Taking into consideration the Chapter II with section 37, the Association deprecates the provisions made in the Bill for increasing the already too numerous classes of tenure-holders, who are said to be the most rack-renting of all the landlords existing, and thinks that every effort should be made to diminish rather than increase their number. But what the Association is most afraid of is that if the Bill be passed into law, it may have a disastrous effect on the peasantry. The Association thinks that the conversion of occupancy-rights into tenures under any circumstances will not deter mahajans from purchasing their rights.

8. Registration under section 15 should be made compulsory either by providing a penalty for non-registration within a specified space of time or declaring the transfer invalid if not registered within that time.

9. The Association consider Chapter IV as unnecessary. In all matters, except as to enhancement of rent, raiyats with fixed rent should be treated as raiyats with rights of occupancy.

10. The Association deprecates the provisions laid down in sections 25 and 26, which give to the settled raiyat the right of occupancy, even in land situated within the village or estate belonging to petty jagirdars and other free holders, if he is but allowed to cultivate it for a single season.

11. Sections 28 and 29 provide that if one or more of the several joint-proprietors or tenure-holders acquire the right of occupancy of a raiyat, each of them will retain it. Even a neighbouring zemindar or a mahajan is allowed to retain that right should he acquire it by purchase or otherwise. But it is only in the case of the landlord acquiring the same by purchase that the occupancy-right shall cease to exist. The distinction is invidious and unnecessarily harsh. The Association proposes that either the two sections referred to above be altogether omitted, or that a provision be made to the effect that if the purchaser of an occu-

pancy right lets out the whole or a part thereof, the right of occupancy shall cease to exist with respect to that portion. The Association prefer the latter course, as it thinks that every endeavour ought to be made to give fixity of tenure to the actual cultivator.

12. Referring to section 31, the Association is of opinion that the right of succession should only be transferred to the lineal descendants of the deceased or other member of his family living jointly with him. The Association would altogether omit the right of transfer, or give it only under this condition, that the inheritor would retain that right if he cultivates the land himself. But if he lets it to a third party the right will be transferred to him, *i.e.*, to the actual cultivator.

13. As regards the right of pre-emption, it appears to the Association that under the Bill as it stands, the landlord, if he purchases occupancy-right, will, in the majority of cases, purchase a bag of wind. But if the suggestion of the Association as to the transfer of the right to actual cultivators be adopted, there will be no ground for complaint.

14. The Association deprecates all restriction put by section 41 and other provisions of the Bill under free contract, and does not understand why, when a court of law can enhance rent by 25 or 50 per cent., the parties cannot between themselves agree for the payment of more than 12½ per cent.

15. The Association recommends to take away the restriction put in section 46 (*a*), and regrets to find that the Bill as a whole has a tendency to increase litigation and to discourage the existence of any sympathy between the landlord and the tenant.

16. The use of the words "staple food-crops" in section 50 will, the Association apprehends, be productive of great hardship. It does not see why no account should be taken of more valuable crops, such as indigo, tobacco, oilseeds, cotton, &c.

17. Commutation under section 53 ought not to be allowed except with the consent of the landlord.

18. The compulsory registrations under section 57 would, in the opinion of the Association, be vexatious, and should therefore be omitted.

19. Section 62, the Association thinks, will encourage subletting which may temporarily be allowed under the exceptional circumstances contemplated in section 37 (*a*), but in all other cases the law ought to distinctly provide that the lessor cannot receive from the lessee more rent than what he himself pays.

20. The Association approves of the proposition made in sections 70 to 72 regarding the grant of receipts and accounts. But the forms appended are such as it would almost be impossible for the landlord to grant receipts regularly if, as the Association understands, he has to state in each separate receipt for each payment the particulars of the holding and of all previous payments.

21. The Association does not think that the provisions for distraint made in Chapter XIII are necessary. The present law should be allowed to stand.

22. The law should make some provision to facilitate the landlord using lands held by raiyats for making tanks, embankments, or other improvement of the estate.

23. For the realisation of arrears of rent the patni sale law should be adopted in the case of tenures and other transferable holdings.

24. In the case of non-transferable holdings, provision should be made to the effect that when the landlord files a plaint stating the amount of arrear for full one year or more, a notice should be given to the raiyat to pay up the arrears of dispute the zemindar's claim within a month from the date of receipt of notice, and if he does not he should be considered to have forfeited all his claims to the possession of the land. If he does not pay or dispute the zemindar's claim within that period, or in case of dispute he does not pay the amount the court may decree within one month from the date of the decree, he should, on the zemindar's application, be ejected, and his property sold for the amount decreed, provision being at the same time made against fraud on the part of the landlord.

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Dated 24th November, 1884.

From—Babu Rajkissore Mookerjee, Cultivator-raiyat, Utterpara,

To—The Secretary to Government of India, Legislative Department.

I have the honour to submit herewith a memorial on the subject of the Bengal Tenancy Bill, numerously signed by Bengal raiyats and addressed to His Excellency the Viceroy, and I request the favour of your laying it before His Excellency. I also forward 70 spare copies of the memorial.

*To His Excellency the Viceroy and Governor-General of India in Council.*

The humble Memorial of the undersigned raiyats of Bengal.

MOST RESPECTFULLY SHEWETH,—That your petitioners have read with great concern the Bill entitled the Bengal Tenancy Bill, now under the consideration of the Legislative Council of India, published in the *Calcutta Gazette* of April 16th, 1884.

2. That your petitioners have noticed with great alarm the provisions in the Bill aforesaid relating to the grounds of enhancement of rent and the limits of enhancement of rent and to the distinction drawn between occupancy and non-occupancy raiyats as to the rates of rent payable by them.

3. That your petitioners entirely agree in the following observations made by the Hon'ble H. J. Reynolds in his memorandum of dissent from the finding of the majority of the Select Committee, published in the *Calcutta Gazette* of April 16th, 1884, Part VI, page 264: "For, as agricultural holdings must from time to time fall into the hands of the landlords, and as the landlords are left free to let these out at almost any rental they may think fit to demand, it is evident that the prevailing rate will steadily increase, and that this rate will regulate the rents not only of tenants newly admitted to occupation, but of the general body of the tenantry.' Your petitioners notice with pleasure that the same view is taken by the Government of Bengal in its Circular No. 3T-R., dated Darjeeling, the 24th May, 1884, addressed to the Commissioners of Divisions. In paragraph 11 of the Circular it is said: "It must be remembered that through the operation of the pre-emption clauses of the Bill (if they are retained) and through the falling in of tenancies owing to ryots' deaths or desertions of their holdings, a very considerable quantity of *raiyati lands* does yearly fall into the hands of landlords, who, under the provisions of this Bill, may deal with it in the first instance under Chapter VI, and let it to non-occupancy raiyats at rates above the prevailing occupancy rate. These lands might subsequently be let to settled ryots of the estate or village at further enhanced rates, and so become occupancy lands, the enhanced rate payable for which would be available as evidence to raise the hitherto prevailing occupancy rate of the village." Your petitioners, therefore, regard section 42, clause (1) of the Bill as dangerous to their interests.

4. That your petitioners feel themselves aggrieved by the provision for enhancement on the ground of a "prevailing rate" [section 43, clause (*a*)]. Your petitioners need not state at any length the reasons for regarding this provision as a grievance for they are clearly set out by the Government of Bengal in its letter No. 1906 T.-R., dated Darjeeling, the 15th September, 1884, addressed to the Government of India and published in the Extra Supplement to the *Gazette of India*, October 11th, 1884, page 92. The reasons are stated in paragraph 40, page 117 of the Supplement.

5. That your petitioners also regard section 43, clause (*b*) as unjustly affecting their interests, for it lays down that a rise in the average prices of food crops shall be a ground of enhancement. A rise in prices not occasioned by the skill, industry, or expense of the landlord; and your petitioners do not see what claims the landlords have to any advantage resulting from a rise in prices. A rise in prices may be very often only a very lucky accident to the raiyat, and he is entitled to its full benefit. Where the rise in prices is not distinctly traceable to any action of the landlord's, it is the raiyat alone who, your petitioners submit, is entitled to all the advantages arising out of the fact. Your petitioners do not raise the slightest objection to clause (*c*) of section 43 which allows enhancement on the ground of improvements effected by the landlord. But a rise in prices is never the result of any step taken by the landlord; and your petitioners submit that the landlord is entitled to no enhancement save such as may be claimed on the ground of his having taken active steps to improve the quality of the land or enhance the value of the produce. Your petitioners notice with regret the fact that the Government regard as indisputable the claim of the landlord to enhance rent on the ground of a rise in prices. In paragraph 13 of the letter addressed by the Government of India to the Government of Bengal, No. 784, dated Simla, the 5th May, 1884, it is said: "In many parts of Bengal the rise in prices of recent years has been very considerable, and the complaints of the zemindars that under the present law they have been unable to obtain a proportionate increase of rent are admitted to be well-founded." Your petitioners crave leave to submit that zemindars have no claim to a proportionate increase of rent. Rise in prices is determined by economic conditions which are not under the control of the zemindar, and he can no more claim an enhancement on this ground than he can if the raiyat gets a large legacy under the will of a stranger. That rise in prices should be no ground of enhancement is a proposition which your petitioners deem to be justified not only by considerations of justice and economy, but by the Permanent Settlement and the usages and traditions which have prevailed in Bengal. In Volume II of the work entitled, "The Zemindary Settlement of Bengal," Appendix XX, the subject of enhancement is discussed at great length, and in page 143 the following observations are made: "Lord Cornwallis distinctly foresaw a rise of prices, yet he fixed the zemindar's assessment for ever; and in enumerating the sources from which the zemindars might increase their rents, he mentioned the *substitution* of more valuable for cheaper kinds of produce, but omitted mention of increased money-rents from a rise of prices of the old kinds of produce.....The Regulations of 1793 did guard against enhancement by explicitly stating that the amount of customary money-rent to be

entered in the pottahs then to be *immediately granted by the zemindar*, would be the sole amount recoverable thereafter by the zemindar, who was expressly prohibited from increasing it by fresh abwabs, *i.e.*, by recourse to the only old ways in which rent in excess of the original *asul* used to be obtained on account of a rise of prices." In page 152 of the same volume it is pointed out that Lord Cornwallis omitted to legalise enhancement of the raiyat's rents on occasion of a rise of prices; and in page 156 where the conclusions of the Chapter are summed up, it is observed that in 1793 by a distinct engagement the faith of the Government was as solemnly pledged to the raiyat as to the zemindar, and that a "breach of that engagement is chargeable on the Legislature that passed Act X of 1859 which—nearly seventy years after the decennial settlement, and for the first time under law—subjected the raiyat's rent to enhancement from a rise of prices." In page 147 of Volume I of the same work it is observed: "Thus an increase of the raiyat's rent from a general rise of prices of the old kinds of produce was not contemplated. The exclusion of this from the possible sources of increased revenue was not inadvertent—it was intentional; for the noble Lord had in a previous paragraph of his minute protected the zemindar from any increase of the rent payable by him to Government on account of any such rise in prices."

6. That your petitioners find to their great surprise and regret that the Bill under consideration recognises no principle for determining the maximum limit of enhancement. Section 75 (*d*) of the original Bill provided that "the enhanced rent shall not in any case exceed one-fifth of the estimated average value of the gross produce of the land in staple crops, calculated at the price at which raiyats sell at harvest time." This clause, your petitioners find, has been omitted from the present Bill. In paragraph 11 of the letter of the Government of India addressed to the Government of Bengal, it is observed: "The Government of India is also inclined to agree with the Select Committee that failing this test the most feasible check on rack-renting is to limit the percentage of increase obtainable at any one time on existing rents when rent is enhanced either by private agreement or by suit." Your petitioners cannot help remarking that the principle here adopted by the Government of India is in reality no principle at all, and in the second place it provides no means for determining the maximum limit of enhancement that may ever be reached. There is a distinction between the maximum increase obtainable "at any one time" and the maximum rent which may ever be claimed from the raiyat. Furthermore, the method adopted by the Government of India for checking rack-renting seems to assume that no raiyat is already holding under a rack-rent, that some increase of rent may be asked for, and that the only problem for consideration is to limit the percentage of increase obtainable at any one time. Sudden enhancement on a large scale would unquestionably be a great grievance to the raiyats. But an indefinite increase of rent, though slowly and gradually achieved through a long series of years, would be none the less a grievance. In all cases of enhancement the relevant inquiry is not if a slight increase will be bearable, but if any increase is justifiable having regard to the quantity of the produce. To limit the percentage of increase obtainable at any one time is a bar only to sudden enhancement and not to indefinite enhancement. To regulate enhancements by percentages of increase is to follow no principle but to act arbitrarily. The rent already paid is assumed to be below the rack-rent, and an attempt is made to reconcile the raiyat to an enhancement by making the percentage of increase too small to be viewed with alarm. To regulate the maximum limit of enhancement by reference to the rent already paid, in other words, to make the existing rent a sort of unit or standard of measurement, is to follow no principle at all, for the existing rent has been determined on no principle. The mere observance of arithmetical uniformity does not amount to the adoption of a principle. Percentages of increase, however regular, consistent and uniform, furnish no rational method of enhancement, for the original basis of calculation, the rent already paid, is itself determined by no principle. Besides, as your petitioners have already observed, the system of percentages of increase determines no real maximum limit of the rent payable by a raiyat. Your petitioners submit that under no circumstances the rent payable by a raiyat should exceed a certain proportion of the gross produce. The maximum limit of rent in all cases, whether the enhancement be by suit or by private contract, ought to be a certain determinate fraction of the gross produce. Your petitioners, while they are thankful for the provisions against sudden enhancement beyond small percentages on existing rent, are nevertheless anxious that the Legislature should prescribe a definite maximum limit of enhancement by reference to the gross produce. As a matter of fact, the maximum rent that has ever been claimed from the Bengal raiyat or from cultivators in other countries has been far less than one-fifth of the gross produce. Your petitioners have referred to that proportion only because it was mentioned in the original Bill; but your petitioners would most respectfully submit that in their opinion the fairest maximum of rent would be one-sixth of the gross produce. Your petitioners feel bound to admit that the determination of any particular proportion like one-sixth, one-eighth, or one-tenth would be more or less arbitrary; but they are anxious that some maximum limit should be prescribed having relation to the quantity of the gross produce. Such a limit has been recognised not only in India but in various other countries. In "the Zemindary Settlement of Bengal," Volume I, pp. 92—94, authorities are cited to show that in ancient times the land-tax levied in Egypt was one-fifth of the gross produce, in Greece one-tenth, among the Romans one-tenth, in Persia one-tenth, in China one tenth, among the Hindus one-sixth of the gross produce. In Cochin-China and Siam the amount of the land-tax is estimated at 4 per cent. of the gross produce. In the Burma Empire the Government impost on cultivated land is only a tenth part of the produce. It thus appears that to fix a certain

proportion of the gross produce as the maximum limit of rent is by no means an impracticable idea. The difficulties felt by the Government in adopting such a limit are, first, that the average produce of different lands cannot be ascertained, and second, that the rent payable for lands growing other than staple food-crops cannot be ascertained. Your petitioners submit that the difficulty in ascertaining the average gross produce of particular lands is by no means insuperable. They submit for Your Excellency's consideration a form which is set out in the margin and marked A which should be filled in every year by the zemindar and also by an officer of Government and sent to the Collector for the purpose of determining the rent payable by the raiyat. If the zemindar claims an enhancement, or a raiyat claims an abatement, he must apply to the Collector, and the Collector after looking at these annual returns shall give a certificate stating his opinion. If the Collector allows an enhancement, the ryot may bring a suit in a Civil Court disputing the zemindar's right to enhance; and if the Collector allows an abatement, the zemindar may bring a suit in a Civil Court disputing the raiyat's right to get an abatement. But where the Collector declines to allow enhancement, it shall not be open to the zemindar to bring a suit in a Civil Court to obtain enhancement; and where the Collector declines to allow abatement, it shall not be open to the raiyat to bring a suit in a Civil Court to obtain abatement. The Collector's certificate ought to be declared to be evidence admissible in a Civil Court. In other words, enhancement and abatement should only be obtained by application to the Collector; the Collector should consult the annual returns, and his certificates shall be final and conclusive evidence as against the party applying; but the other party may have it set aside in the Civil Court. Your petitioners raise no objection to the provisions of the Bill under consideration regarding the intervals of time at which enhancement or abatement can be claimed. With regard to the second difficulty noticed by the Government of India your petitioners venture to state as the result of their experience that crops, like sugarcane, mulberry, potato, &c., ought to be assessed at double the rent payable on staple food-crops, and that this would be a fair and equitable assessment. Sugarcane and such other crops grow on high land alone, and the expenses of their cultivation are very great.

7. That your petitioners submit that though there is and ought to be distinction in the status of the occupancy and the non-occupancy raiyat, there ought to be no distinction as regards the rates of rents payable by each, the grounds of enhancement and the limit of enhancement. Occupancy right is a species of property and has special incidents annexed to it. Those incidents do not, of course, appertain to the holding of the non-occupancy raiyat. But your petitioners are aware of no principle which justifies a distinction in the rates of rent payable by the two classes of raiyats. Zemindars have always taken steps and, if the Bill under consideration be passed into law, will take yet more active steps to prevent the acquisition of occupancy rights; and as the advantages incident to those rights will be out of the reach of the vast majority of the Bengal raiyats, your petitioners submit that there will be no appreciable improvement in the condition of the Bengal peasantry by conferring special privileges on the occupancy raiyats alone. Your petitioners, therefore, heartily concur in the recommendation made by the Government of Bengal that the rent of the occupancy or non-occupancy raiyat shall not exceed one-fifth of the value of the gross produce calculated in staple food grains, and your petitioners are anxious that the same equality should exist as regards rates of rent and grounds of enhancement.

8. That your petitioners have noticed with very great regret the recommendation of the Government of Bengal to modify the presumption as to fixity of rent by requiring proof of such fixity in all future cases from 20 years before passing the Bill. Your petitioners view this recommendation with great surprise when they read the finding of the Lieutenant-Governor on the evidence before him. "On the evidence before him, therefore, Mr. Rivers Thompson feels that he might, with the weight of authority, argument, and fact in his favour, ask for the retention of the presumption contained in the existing law as regards occupancy rights as well as tenures. But on a full review of the Bill as a whole he abstains from taking up that position. Recognising the sincerity of the zemindar's objections to the presumption, and the insistance with which they have urged their views, he is willing to make a concession to their wishes, provided that the interests of the raiyats shall not, in the long run, suffer from the change in what is to them a most valuable provision." Your petitioners need hardly apologise for stating their view that the opinion of the Legislature ought to be based upon the evidence before it and upon no other material. The sincerity of an objection and the vigour with which it is pressed ought not to weigh with the Legislature as against authority, argument, and fact. All objections must, in the absence of any evidence to the contrary, be presumed to be sincere; and it would be a dangerous doctrine to lay down that no objection will be listened to unless it is pressed with vigour. The raiyats object to the modification of the presumption under the existing law, and the objection is thoroughly sincere. If it is not pressed with extraordinary vehemence, the moderation of tone is due not to lack of interest in the subject but to a feeling of respect for the Legislature. The 20 years' presumption has a history of its own, a reference to which alone can throw light on its real nature and significance. The Regulations of 1793 did not contemplate enhancement of rent; the zemindar could not claim more than the established pergunna rate of rent. When enhancement was first legalised by Act X of 1859, the twenty years' presumption was introduced as a sort of compensation to the raiyats for the liability to enhancement newly imposed on them. They

were declared liable to enhancement, and their only protection lay in the presumption which declared that tenants holding lands at a fixed rate for twenty years previously to suit would be presumed to have held the lands at the same rate from the permanent settlement. To modify the presumption is to lessen the protection; and your petitioners submit that the raiyats have done nothing to deserve that penalty.

9. That your petitioners beg leave to submit that enhancement ought not to be regarded as a matter of course, but that it is in reality an anomalous and unjustifiable proceeding. Enhancement is not to be allowed, if it is to be allowed at all, except on grounds of the most obvious considerations of justice. Historically speaking, all enhancements are illegal; and Act X of 1859 in so far as it allowed enhancements was *ultra vires*. Your petitioners do not ask for the removal from the Bill of all provisions relating to enhancement, only because Act X of 1859 has familiarized them with a proceeding which is essentially illegal. Your petitioners beg to invite your Excellency's attention to the following authorities with a view to show that enhancement of rent is, strictly speaking, an innovation introduced in 1859, and that all provisions relating to it must be as far as possible favourable to the raiyat. The Bengal Government, on the 16th August 1769, desired Collectors to impress upon the raiyats that "our object is not increase of rents, or the accumulation of demands, but solely by fixing such as are legal, explaining and abolishing such as are fraudulent and unauthorised, not only to redress the raiyat's present grievances, but to secure him from all further invasions of his property." Sir Philip Francis, in a minute written in 1776, "considered that the rate of assessment per beegah should be fixed for ever upon land, no matter who might be the occupant." Warren Hastings wrote in the same strain: "Many other points of inquiry will also be useful to secure to the raiyats the permanent and undisputed possession of their lands, and to guard them against arbitrary exactions." On the 12th April 1786, the Court of Directors wrote: "It is entirely our wish that the natives" (raiyats or subjects) "may be encouraged to pursue the occupations of trade and agriculture by the secure enjoyment of the profits of their industry; and that the zemindars and raiyats may not be harassed by increasing debts, either public or private, occasioned by the increased demands of the Government." Sir John Shore, in the same spirit, observed: "And at present we must give every possible security to the raiyat as well as, or not merely, to the zemindar. This is so essential a point that it ought not to be conceded to any plan." The Court of Directors, on the 19th September 1792, approving of these views recognised it as an object of the permanent settlement that it should "secure to the great body of the raiyats the same equity and certainty as to the amount of their rents and the same undisturbed enjoyment of the fruits of their industry which we mean to give to the zemindars themselves." Twenty-seven years later, the Court, on the 15th January 1819, deliberately re-affirmed: "We fully subscribe to the truth of Mr. Sisson's declaration that the faith of the state is to the full as solemnly pledged to uphold the cultivator of the soil in the unmolested enjoyment of his long-established rights as it is to maintain the zemindar in the possession of his estate, or to abstain from increasing the public revenue permanently assessed upon him." The Regulations of 1793 regarded the old-established pergunnah rates as the maximum rates of rent and prohibited the levy of fresh *abwabs* which would have been tantamount to an enhancement of rent. While every other detail affecting the relations of zemindar and raiyat was carefully elaborated in the Regulations of 1793, they contain no provision for an increase of that rent which ancient custom had determined as the established pergunnah rate of rent. The intention, that by the arrangement of 1793, the raiyat's rent should be as permanently settled as the zemindar's at the amount obtaining in 1793 was so well known that it was carried out in the similar settlements in Benares and in the zemindari tracts in the Madras Presidency; and Mr. H. Colebrooke, on the same understanding, urged in 1812 that even then "measures should be adopted, late as it now is, to reduce to writing a clear declaration and distinct record of the usages and rates according to which the raiyats of each pergunnah or district will be entitled to demand the renewal of their pottahs, upon any occasion of a general or partial cancelling of leases." In the same conviction the Bengal Government, on the 1st of August 1822, proposed to settle the rents payable by raiyats to zemindars in the permanently settled Lower Provinces. The pergunnah rate continued, in law, standard maximum rate from 1793 to 1859; as such it was recognised in the Sale Laws, and in those relating to distraint and the collection of the revenue, as for instance, Regulation XLIV of 1793, XX of 1795, VII of 1799, VIII of 1819 and XI of 1822.

Your petitioners, therefore, pray as follows:—

(1) That no alteration may be made in the present law relating to the presumption as to fixity of rent where the tenant has held for twenty years consecutively at the same rate.

(2) That enhancement of rent may not be allowed on the ground of rise in prices.

(3) That enhancement of rent may not be allowed on the ground of a prevailing rate.

(4) That the rent of the occupancy or non-occupancy raiyat may never exceed one-sixth of the value of the gross produce calculated in staple food-grains, whether the enhancement be by suit or private agreement.

(5) That no distinction may be recognised between occupancy and non-occupancy raiyats as regards the rates of rent payable by them and the grounds on which enhancement may be claimed.

And your petitioners as in duty bound shall ever pray.

## A.

*Abstract shewing the actual state of Tenancy to be filed annually before the Collector by every person holding interest above that of the occupancy or mocurary or other class of raiyats.*

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Name of Raiyat. | Number of plots occupied by each. | Area of each plot. | Classes of each plot showing produce. | Rate of rent per bigha of each plot. | Date of the original creation of the tenancy. | Conditions of the original tenancy whether by written contract or possession. | Rent paid for each plot. | Cause if any of the change in the rate of rent. | Percentage of increase or decrease of rent with reference to the table of rates prepared by Government. | Price of each sort of staple food crop at the nearest market. | Remarks by the Collector whether rackrented or under or less. |
| | | | | | | | | | | | |

*N. B.*—Columns 1—9 to be filled in by the landlord, and columns 10, 11, & 12 to be filled in by the *Canongos* or other officers of Government.

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*Note by the Hon'ble* T. M. Gibbon.

*Transferability of Occupancy-holdings.*

I have hitherto been under the impression that the Government, in making the provisions of the Takkáví Act applicable to this province, had declared for the principle of transferability, and that the principle was no longer at issue.

The decision come to by His Honour to leave the law regarding the transfer of occupancy-rights in Bihár in its present unsatisfactory state, by omitting transferability from among the incidents attached to an occupancy-holding, or as His Honour has put it, "leave transferability of occupancy-rights in Bihár to custom," to have one law for the raiyats in Bengal and another for the raiyats in Bihár, to throw over at the 23rd hour of the day a provision of the Bill which mainly recommended it to the outside public,—a provision of the Bill which, if abandoned, will make half the Bill unnecessary,—has, I am free to confess, created in my mind a feeling of anxiety and intense disappointment; and I would fain believe His Honour has failed to realize the full effects of his decisions on the well-being of the province, the enormous restrictions it places on all fair trades or the greater disadvantage it places the raiyat in his race for life. I would fain hope His Honour may reconsider his decision. Opinions so forcibly and lucidly stated, expressed in language that none among us can hope to equal, must, I am sure, at all times carry great weight with them; when franked with His Honour's seal their evidence is almost conclusive. To try to refute His Honour's arguments, or to induce your Council to pause before accepting them as final, I feel to be almost hopeless; but hopeless as the task may be, an effort must be made, that all whose interests are locked up in the passing of the measure may feel that an effort (however poor a one) has been made to advocate their cause, that all may be assured and feel that the measure has been abandoned only from the essential weakness of our cause. With this object in view I would crave your assistance—above all, your patience. I would preface the remarks I am about to make by saying that, to my mind, there has always been a wide distinction between the transfer of a holding and a transfer of the rights attached to that holding. A raiyat may transfer his holding to another beyond

recall, but he cannot transfer his "rights" in that holding to another, as the law distinctly declares that a person can only acquire a right in land from long possession; and it is to rectify this that the provisions which relate to transfer in the Bill are required—required to legalize, direct and control it, and, where the right may be exercised to the injury of others, restrict it.

Six years ago, when the measure was first mooted, some of us, who are now strongly impressed with the necessity of controlling the system, were then among the opponents of the measure: many of us, who were then content to leave transferability to take root gradually and consolidate itself, are now strongly convinced of the necessity of legalizing and directing it: the events of the last few years have taught us differently. The day for leaving it to be governed by custom has passed; our own acts have made it impossible. For six years the measure has been discussed and re-discussed until every raiyat and trader believes that it has become part of the law of the country; and small blame to them for doing so.

Means for restricting it, measures for controlling it, have all been discussed, but in all these years the Government has shown no sign that the principle of the measure was at stake. The child of the Bengal Government and of the service, the public adopted it; the Government will now be doing the public a positive wrong to disown it.

The Government by their acts have stimulated transfer, and with transfer, the mortgaging of occupancy-holdings to an extent that few could have foreseen a few years ago, and which few who do not come into direct and constant contact with the raiyat will realize to an extent that the papers submitted by the Government of Bengal fail to show.

I would again urge you to control the movement before you are too late.

To turn round at the last moment and tell the people that our Government has changed its mind, that the money they have advanced on the security of the land is so much money wasted, will, to say the least of it, be a cruel act, and may be a hazardous one.

Without questioning the correctness of the figures submitted by His Honour's Government, I may be permitted to say that they in no way represent the full significance of the movement, or the hold it has taken on the minds of the people.

Free transfer, and transfer under decrees of Court, must at all times be few in comparison with mortgages or transactions of a temporary nature, and it is only by enquiring the number of mortgages effected within the last six years—registered mortgages and mortgages the registration of which is optional, that one can realize the result of this long discussion. The papers submitted by His Honour's Government make no reference to mortgages.

In these papers my own district appears in reference to numbers and value of transactions almost at the bottom of the list, yet it shows that five times the number of transfers were effected in 1883-84 than were effected in 1881-82.

For me, a non-official, to attempt to give a precise list of all the mortgages that have been effected in this district within the last six years would be impossible; it would entail a house-to-house enquiry and enormous labour, but for my own satisfaction I made the enquiry on a portion of the estates under my charge. The estate consists of nearly 1,700 villages; I enquired in the following, and the result is as follows:—

| Villages. | Transactions. | Area of holdings in Bihár. | |
|---|---|---|---|
| | | Local bighás. | Standard. |
| 202 | 1,792 | 7,392 | 29,568. |
| Rent payable. | Bighas mortgaged. | Money raised. | |
| | Local. Standard. | | |
| Rs. 19,071 | 2,106 8,424 | Rs. 1,22,734. | |

or Rs. 61 per local bíghá, Rs. 15-4 per standard.

When it is remembered these transactions were effected in Chumparun—a district in which transfers were, a short time ago, almost unknown, a district in which land is easily procurable, that the area covered is only a small portion of an estate—I would urge you to consider how necessary it is to direct and control the movement, and of what importance the measure proposed in the Bill must be to us and to more forward districts. I would point out that nearly all these transactions refer to portions only—jotes, not entire holdings. Careless and improvident as the raiyat is, such as he is your laws have made him: believing in the first instance that his lands could not be seized, can you blame him for not making provision for the future?

I would beg of you to try to realize the position of a man who may not sell the property to clear himself of debt, and yet whose property may be sold under a decree of Court for one quarter of its value, who may in fact be deprived of his property and yet find his debts unpaid. That the picture here drawn is not the fruit of my imagination I would beg to submit the following instances. Cases such as these are all over Bihár of frequent occurrence.

| No. | Principal. | Total decree with interest and costs. | Area sold. | | Amount realised. | Balance due. |
|---|---|---|---|---|---|---|
| | | | Local bighás. | Standard. | | |
| | Rs. A. P. | Rs. A. P. | B. C. C. | | Rs. A. P. | Rs. A. P. |
| 1 | 182 9 0 | 237 9 0 | 5 17 0 | 22 | 123 0 0 | 124 0 0 |
| 2 | 82 0 0 | 113 7 9 | 11 4 16 | 44 | 45 0 0 | 68 0 0 |
| 3 | 55 0 0 | 111 10 3 | 2 4 0 | 8 | 37 0 0 | 64 0 0 |
| 4 | 49 6 0 | 68 10 9 | 2 11 0 | 10 | 28 0 0 | 40 0 0 |
| 5 | 242 0 0 | 343 15 9 | 11 16 14 | 46 | 98 0 0 | 245 0 0 |
| 6 | 692 11 0 | 822 10 0 | 3 10 0 | 14 | 102 0 0 | 720 0 0 |
| 7 | 110 0 0 | 126 0 0 | 3 3 0 | 12 | 45 8 0 | 81 8 0 |
| 8 | 204 6 0 | 302 2 9 | 7 11 18 | 30 | 159 0 0 | 143 0 0 |
| 9 | 606 4 0 | 862 15 0 | 13 19 12 | 56 | 67 12 0 | 805 0 0 |
| 10 | 424 0 0 | 556 4 6 | 5 0 0 | 20 | 55 0 0 | 501 0 0 |
| 11 | 112 0 0 | 194 7 9 | 1 8 0 | 6 | 43 0 0 | 151 0 0 |
| 12 | ..... | 45 2 8 | 1 19 0 | 8 | 15 8 0 | 30 0 0 |
| 13 | ..... | 37 0 0 | 1 9 5 | 6 | 28 8 0 | 8 8 0 |
| 14 | ..... | 18 0 0 | 0 12 1 | 2 | 5 0 0 | 13 0 0 |
| 15 | ..... | 293 13 6 | 12 13 0 | 50 | 126 0 0 | 173 0 0 |
| 16 | ..... | 176 12 0 | 9 17 12 | 40 | 98 0 0 | 78 0 0 |
| 17 | ..... | 102 14 6 | 3 6 10 | 13 | 71 0 0 | 31 0 0 |
| 18 | ..... | 52 0 0 | 1 19 5 | 8 | 18 0 0 | 34 0 0 |
| 19 | ..... | 32 0 0 | 1 0 0 | 4 | 6 4 0 | 23 12 0 |
| 20 | ..... | 46 15 0 | 0 16 5 | 3 | 15 0 0 | 31 0 0 |

In making out the above account I have taken the local bíghá as four standard bíghás and dropped annas and pie.

I would here maintain that were transferability legal, either the creditors would have been satisfied with their security, or the debtors could have cleared themselves of debt by disposing of their property at its proper value.

That the measure is now essential to the welfare of the province many have urged more forcibly than I am able to do. It has, I think, been admitted on all hands, as also by His Honour's Government, that legalizing transferability of occupancy "rights" will enable the raiyats to raise money on easier terms than they could otherwise do.

To some this seems a small matter and hardly worth the stir that has been made over it, but to all who have had any experience of the subject, it makes all the difference between life and death, between degrading poverty and affluence.

With power to raise money on the security of his land, he may in his time of need raise a larger sum than he could otherwise do—possibly to the extent of five years' purchase of his holding—at a lower rate of interest and, what is of even greater importance, for a longer period.

Obliged to raise it on his farm implements or on the probable outturn of his crops, he can only raise it for short periods, necessitating his disposing of them in the worst market, and owing to the insecurity of the investment he can only raise it at exorbitant rates of interest.

In a season of scarcity where his crops have failed he has nothing but his bond to offer. The trader or money lender, when investing his money, will look for interest in proportion to the risk he runs, and not even an Act of Parliament will induce a trader to lend his money against his inclination.

Unless the raiyat is placed in a position to offer some tangible security for the money he borrows, he must continue to pay the exorbitant interest he is at present accustomed to pay to the end of the chapter.

Traders and money-lenders at present demand and receive exorbitant rates of interest from the raiyats. They not only charge from 25 per cent. to 30 per cent. interest on the money advanced, but the raiyat has to agree to repay the debt in grain and to deliver the grain some seers cheaper than it is selling in the market.

The experience of all countries goes to prove that the cultivators of the soil are borrowers, the very nature of their employment to a certain extent necessitating their being such. That they should be obliged to borrow at the above exorbitant rates of interest is the result of our laws.

That they should continue to do so, and ever hope to be independent is an impossibility. That they should do so and still live, they may thank a bounteous Providence and not our laws. A law that gives the landlord the first lien on the crop, and will not permit of the land being given as security, must act as a deadweight on the tenant-farmer.

Many have argued that the raiyat is such a improvident creature that you should enact laws to save him from himself. With these I cannot agree; our laws are forcing him into unnecessary debt; in the hope of preserving him, they are driving him on to ruin.

If it is your wish that he should ever become self-reliant, let him feel that he is looked upon as a reasonable creature—a man responsible to himself for his own acts.

If it is your intention to re-enact for his protection the laws in force a century ago, you must be prepared to re-enact the old usury laws, and few, I think, will say that this is to be desired. It may be said all my experience, all my information, only refers to the North Gangetic portion of the province. This I deny, but to these I would reply that if I show that the measure is a necessity to the most backward portion of the province I prove that it is a necessity to all.

Many have argued that to legalize transferability of occupancy-rights would be to do the landlords a grievous wrong.

The landlords, through their representatives, have objected to the measure on the grounds—

*First*—That it is injurious to the raiyat.

*Secondly*—That it will be injurious to the zamíndár as it will take away a valuable right from him.

*Thirdly*—It will allow hostile persons to intrude into his estate.

*Fourthly*—That it was not permitted under the terms of the permanent settlement or under Act X of 1859.

*Fifthly*—That there is nothing in the Bill that will prevent greedy speculators from trafficking in land.

Whether it will be injurious or not to the raiyat I have in the above attempted to show; that it can under proper safeguards by any possibility be injurious to the landlord or take away from him a valuable right I cannot realize, and in no instance that I remember have the zamíndárs directly or clearly stated what that valuable right consists of which they are being deprived of. The only "right" they might have claimed—a right that (if I may use the expression) they have hinted at, never openly and directly claimed—is the right to participate in the price of the transfer.

Whether, owing to the *laches* of our Government, they may be considered to have acquired a prescriptive right to do so or not, I must leave others to decide; for my part I would rather see their right declared and legalized than let matters drift on in their present unsatisfactory way.

Otherwise their rights in the land are preserved to them under the Bill. Their rents are assured to them, as they are the first charge on the land and on the crops.

Their rights to enhance and distrain, &c., are left intact, as the transferee acquires no new rights with the land.

That it may permit hostile persons to acquire a footing on their estates I admit to be a drawback, but this has been to some extent remedied in the Bill.

That it was directly permitted at the time of the permanent settlement is true; that it was forbidden there is no evidence. Under the Regulations that the zamíndárs appeal to, a raiyat could not be dispossessed of his lands. If the raiyat did not pay his rents, his crops were distrained. He suffered in person—he could not be deprived of his lands. Under the old Regulations, if a jotedár failed to pay his rents and his landlord seized his lands, when the rents were paid, the zamíndár had to account for his stewardship; he could not deprive him of the land to give to others. If the zamíndárs, when objecting to the raiyats being accorded the right to transfer, under the plea that they had not that right at the time of the permanent settlement, offered to forego their right to evict, or their present right to sell up the holdings for the non-payment of rents—rights they did not possess at the time of the permanent settlement—there might be some show of justice in their demand; at the present there is none.

In reference to the objection that the land will fall into the hands of speculators and land-jobbers, I think I may say that there is more speculation of this kind going on at present—I may almost say gambling in land—than there can ever be after the Bill becomes law and transferability is legalized and defined.

I am convinced that, if the fear of land-jobbers and speculators is the *only* obstacle to legalizing the measure, it may be easily remedied. To remedy this there are many courses open to the Government.

I believe the Secretary to the Planters Association has already forwarded the outcome of our discussions, so I need not take up your time by referring to them here.

Throughout the discussion of this measure the interests of the landlords and tenants have alone been considered; the interests of traders have been ignored.

Much as the money-lenders and traders have been reviled, black as they have been painted, so black that charcoal will leave a white mark on them, they perform a useful part in the economy of the country. Being there, their interests should be considered, their existence not ignored.

Much as many of us may wish it otherwise, both landlord and tenant must for many years to come solicit the assistance of the money-lender and trader—the one for the due recovery of his rents, the other often for his means of subsistence; and yet the Bill is never discussed in a manner to show that the money-lender, grain-dealer, merchant or trader had any concern with its provisions. To make trade secure, the interests of traders must be considered, and their transactions must receive due protection under the law. Provision must be made to enable the trader to recover debts due to him, to recover damages for breach of contract. With the crops hypothecated to the landlord's rents, how, and from whence, is the trader to recover his dues if not from the land?

It may be said that matters have fared well hitherto without this alteration having been made in the law; but in this I beg to differ; but whether they fared well or indifferently, they can no longer proceed in the same groove. The landlords, the raiyats, the traders, and the Courts have one and all had their eyes opened by the discussion to the state of the law; matters can never again settle down into their old channels.

His Honour's Government would leave it to custom. Custom is a child of very slow growth. Custom must exist for many years before the Courts will acknowledge its existence: who is to pay for its education?

Hundreds may be ruined before the Courts will acknowledge it. Leaving it to custom, you cannot forbid the sub-division of holdings, the transfer of portions—the most mischievous form of transfer and which is now rife everywhere.

To us planters the measure is a necessity; without it we cannot hope to carry on any business with the cultivators. If we cannot recover damages for breach of contract, we cannot carry on business without first acquiring the position of their landlords. I would also beg of you to consider our position, to remember that to bequeath is to transfer. The native inherits; the planter bequeaths to his heirs.

Stress has been laid by his Honour on the fact of the Bihár Committee, and again the Bihár Conference, having vetoed transferability. I would beg to remind you that in the first day of its meeting the Committee agreed that transferability was a necessity to the raiyat. It was only on again discussing the subject the Committee were of opinion that it might give rise to litigation under the Hindu law. And I would beg to point out that transferability was adopted in spite of the Committee's objection to it, and that the excessive litigation that it might give rise to among shareholders is not among the reasons given by His Honour for abandoning it.

By many the rights others claim in property under the Hindu law are considered valid and legitimate restrictions on transferability.

In reference to the decision come to by the Bihár Conference, the accounts are too meagre to enable me to weigh the reasons which induced them to come to it.

It was, I believe, carried by a casting vote only. His Honour has decided to legalize transferability in Bengal and leave it to custom in Bihár, and founds his decision on the information supplied from the registration office. To me they read another lesson. The papers show the "number of years' purchase reckoned on the rents payable," instead of, as it should be, on the raiyats' profits. It would have been fairer and better to have taken the price of a standard bíghá in each district as the standard of value. Taking the figures, or given 1883-84, I find under sales of occupancy-holdings at fixed rates by decree of Court, land in—

| | Rs. A. | Rs. A. | |
|---|---|---|---|
| Burdwan selling at | | 2 12 | per bíghá. |
| 24-Parganas „ | | 3 12 | „ |
| Rajshahi „ | 3 0 to | 4 0 | „ |
| Dacca „ | | 4 0 | „ |
| Whereas in the Patna Division it averages | | 5 4 | „ |
| I find under sales of other occupancy-holdings— | | | |
| Burdwan, land brought | | 5 8 | per bíghá. |
| 24-Parganas „ | 2 8 to | 3 12 | „ |
| Rajshahi „ | | 3 0 | „ |
| Mymensingh „ | | 1 12 | „ |
| Dacca „ | | 7 0 | „ |
| In the Patna Division | | 4 8 | „ |
| In Bhagulpur only | | 1 0 | „ |
| Under sale by registered deed— | | | |
| Burdwan, land brought | | 25 12 | per bíghá. |
| Presidency Division „ | | 6 8 | „ |
| Rajshahi „ „ | | 12 8 | „ |
| Dacca „ „ | | 13 0 | „ |
| Patna „ „ | | 22 4 | „ |
| Bhagulpur „ „ | | 8 8 | „ |
| Under sale of ordinary occupancy-holding, I find— | | | |
| Burdwan, land @ | | 14 0 | per bíghá. |
| Presidency Division @ | | 6 8 | „ |
| Rajshahi @ | | 11 4 | „ |
| Patna @ | | 18 8 | „ |

That is to say, in nearly all instances land has brought a better price in Patna than it has done in Bengal.

If the number of transfers in a district is a sign of the improvident habits of its raiyats, Bengal certainly has the advantage of us.

I would point out that, whereas the parties believing they are acting within the law are able to raise 15 per bíghá on *mortgage* only in Chumparun, when sold by decree of Courts, they bring sums varying from Re. 1 per bíghá in Bhagulpur to Rs. 7 in Dacca.

I have now said all I wish to say, I have taxed your patience to its utmost; I would now only urge you that, be the result of your deliberations to us what they may, try and make a man of the raiyat, and all the rest will follow.

Legalize the transferability of entire holdings, but place every restriction possible on the transfer of portions of them.

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*Note by the Hon'ble* T. M. GIBBON.

CHAPTER I.

1. Believing that the wish to stand well with one's superiors, the hope of future promotion and the natural desire to enhance the value of all estates under one's charge is as deeply implanted in the breast of all officials as it is in that of any other class of men, I cannot, I am sorry to say, endorse the moral adduced in paragraph 5 of the Bengal Government report, *viz.*, that Government officials have nothing to gain by large enhancements. Believing that the

good intentions of our Government cannot in any way redeem its bad laws, I have read with great pleasure that it is His Honour's wish that all Government khas mahals should be made subject to the provisions of the Bill.

2. I would ask if the Government could not see its way to making the enhancement of the rent of raiyats living on estates subject to periodical settlement with zamíndárs, subject to the same rules as apply to the rents of raiyats living on permanently settled estates?

3. I would urge Government to accord to all raiyats, whether living on permanently-settled zámíndárs, Government khás mahals or periodically-settled estates, the same rights and the same privileges, even to the extent of their acquiring a right to hold at fixed rates under the 20 years' presumption if the presumption is to be retained in the Bill.

4. Many of us fail to understand why 40 years' exemption from enhancement should be a valid reason for enhancing the rents of raiyats living on estates under Government control, while 20 years' freedom from enhancement creates a presumptive right to hold at fixed or permanent rates in favour of raiyats who pay their rents to zámíndárs.

## CHAPTER II (*Paragraph 14, Bengal Government Report*).

5. *Presumption of tenure-holder from area of holding.*—Unless our Government is prepared to follow the advice of the Lord Chief Justice and lay down a hard-and-fast rule, which I from my experience believe to be impossible, I would earnestly beg of the Government to retain the presumption exactly as it is laid down in the Bill.

6. It is, I think, the very best solution of the problem that has as yet been proposed.

7. As far as I am able to understand the objections raised to the presumption being retained, most people assume that it is the raiyat's interest to prove that he is not an occupancy-raiyat but a tenure-holder, whereas the contrary is the case. Unless he can at once show that he is a permanent tenure-holder, he is better off as an occupancy-raiyat than he is as an ordinary tenure-holder.

8. A person holding land under a tenure-holder can acquire occupancy-rights in the land; a person holding land under an occupancy-raiyat cannot.

9. As between him and his tenant, a person who is in possession of more land than he can cultivate, and who elects to sublet his lands to others, and afterwards attempts to recover possession of them, pleading that he himself is an occupancy-raiyat, and therefore his tenant can have no occupancy-rights in the land, should, by reason of his subletting, have the onus of proving that he is an occupancy-raiyat and not a tenure-holder cast on him.

10. Again, as between him and his landlord, he may not be evicted from an occupancy-holding; he may from a terminable tenure.

11. It is to be presumed that all "raiyats" acquire the land in the first instance for their own home cultivation.

12. If they do not or cannot cultivate themselves, but sublet to others, there can be no hardship to them in having to prove that they acquired the land in the first instance as a raiyat and not as a tenure-holder.

13. Exception has been taken to the limit of area.

14. My own experience goes to show that the limit of the holding as laid down in the Bill is as fair a one as it is possible to give.

15. The limit to be laid down should, I think, be equal to the area an ordinary well-to-do raiyat can cultivate with his own appliances,—over it rather than under it,—and I think one hundred standard bíghás about as much as he can manage.

16. Although I cannot follow Mr. Reily's example and state the area cultivated by different raiyats living on the estates in my charge, as many of the raiyats have holdings in two and three villages, I can at least show from incontestable evidence that extremely few "holdings" exceed one hundred standard bíghás in this district.

17. If the limit is lowered, thousands whose occupancy-rights are now beyond dispute will be liable to have their titles contested; and this, I presume, the Government do not desire.

## CHAPTER III.

18. Section 11 of the Bill is not, I believe, directly referred to in the report of the Bengal Government: but, as I am doubtful on one or two points connected with it, I would beg to be allowed to call your attention to it.

19. Under section 26 of Act VIII of 1869, a zámíndár is compelled to register all divisions of tenure among heirs and others, but he is not required to give effect to any division of "rents."

20. For this section there is, I believe, no direct substitute in the Bill, unless it may be considered that section 97 is intended to apply to tenures as well as to occupancy-holdings.

21. I doubt very much whether a Court of law would consider that the term "holding" applied to the large tenures (almost or quite estates) in North Bihár.

22. If it is intended to give tenure-holders the right to divide their rents as well as their lands against the wishes and to the detriment of their landlord, some procedure should be laid down for the proper apportionment of rents.

*Discussions of the 20 years' presumption.*—When the Government of Bengal admits, which it practically does, that the presumption is an infringement of the Permanent Settlement, it admits all we have ever claimed for it.

24. Far from the agreement involving the absurdity that no rules of procedure are to be laid down with a view "to shorten litigation," it is not a matter of "procedure" that is involved but a matter of right. We deny that the raiyat ever had or was intended to have the right to hold at fixed rates without the consent of his landlord : we look upon it as a transfer of property from one class to another.

25. I am sorry to say I look upon every instance in which the Courts have, under the procedure decided in favor of a raiyat's right to hold at permanent fixed rates, as a wrong to the landlord.

26. If, as a matter of policy, the Government thought it necessary to accord the raiyat a right he never before possessed at the expense of the landlord, the landlord was clearly entitled to compensation.

27. The report of the Bengal Government nowhere alludes to the rule being made applicable under section 64 (3) to commuted rents.

28. As I said all I wished to say on the subject in my dissent to the Bill, I need not refer further to the subject here.

29. *Procedure for the registration of transfers.*—I would strongly deprecate the alterations recommended in the report being adopted. The chapter, as it stands, I consider extremely valuable, and I would be sorry to see it altered.

## CHAPTER IV.

30. I must still adhere to all I said in this chapter in my memorandum of dissent, and I still think the distinction, I then advocated, should be made in this chapter. I am glad to see I am supported in this by the Bihár Conference.

## CHAPTER V.

31. Should the estate be limited as to extent or period of creation ?

His Honour says that "having regard to the condition of the raiyat and the perfect freedom of the landlord to give or withhold the land, he is satisfied that abuse of the rule is not a practical danger to fear."

32. This may be correct with reference to land at "present" in the possession of the landlord, but will not apply to land already made over to raiyats by landlords who were at the time ignorant of your intention to lay down this hard-and-fast rule.

33. It is only the raiyats of large zámíndárs, such as Burdwan and Bettiah, that will be affected by the alteration asked for ; and I think even the most exacting raiyat may be satisfied if the limit of a thánd or tappá is accepted.

34. His Honour's suggestion that the limits of the estate should be taken as they may exist at the time of the introduction of the Bill, instead of as it stands in the Bill, is, I think, a move in the wrong direction.

35. Whereas the one will only affect the raiyats of a few estates, and that not injuriously, a very large number of raiyats will be seriously affected by the other.

*Section 25 (2) of the Bill.*

36. I would beg to be allowed to call your attention to the purport of this section, and to ask if it might not be taken to mean that a person may revive a claim to land he has been dispossessed of under a decree of a competent Court subsequent to 1st March 1883 and prior to the introduction of the Bill.

37. Section 26 (2) was I believe accepted by the majority of your Committee under the belief that it was in accordance with the present law and practice of the Courts.

38. I would beg to call your attention to the minute of the Lord Chief Justice on the subject, who is evidently of a contrary opinion.

39. Should His Lordship's reading of the law be correct, the subject should, I think, be re-opened and re-considered.

## Note by the Hon'ble T. M. Gibbon.

*Limitation on Transfers of Occupancy-rights in Bengal.*

His Honour the Lieutenant-Governor is of opinion that "if by any definition or legal provision the limitation of the occupancy-right to the actual cultivators could be secured, the free right of transfer would, by common consent, be unobjectionable."

To remedy this, His Honour proposes to allow the landlord a power of vetoing a sale of an occupancy holding to any but cultivating raiyats. The weak point in this scheme would be the difficulty of appointing the person who is to decide whether the purchaser is a cultivating raiyat or a mahájan. Cultivators are so often mahájans, and mahájans so often cultivators, I am afraid, we would require a very complicated procedure to prevent the power being abused.

If it is thought necessary to place restrictions on transfer in order to prevent the land falling into the hands of landjobbers and speculators, I would prefer seeing the transferee's rights in the land restricted to allowing the zamíndár the power of making invidious distinctions. I would restrict the transferee's power to sub-let or again transfer to another for a certain time or term after purchase, and I would place the remedy in the hands of the zamíndár, and thereby compel the transferee to cultivate the land purchased for a certain number of years, or abandon it.

I would beg to be allowed to reserve my opinion of His Honour's scheme until it is more fully worked out.

*Checks on sub-letting.*

The majority of planters will hear with regret that it is His Honour's wish that sections 37 and 62 should be abandoned; for myself I am very glad to hear it. I think it would, if retained, lead to complications hereafter necessitating special legislation to remedy. My brother planters are strongly of opinion that the term of seven years allowed for a sub-lease is not a sufficiently long period, and ask for a longer term. In reference to section 62, the majority of us approve of it as it stands, and, I think, would be sorry to see it abandoned. I do not. I would like to see the tenant and sub-tenant allowed to come to any agreement that they may think fair among themselves, provided such agreement is properly registered; but I would in no instance allow an occupancy-raiyat to recover more than fifty per cent. over and above his own rents from his sub-tenant when the arrangement is a verbal one or unregistered.

To meet the above the section should be altered, not entirely abandoned.

Section 63 contains a very valuable provision, almost the only protection given to a sub-tenant in the Bill, and should be retained.

*On the ground of fluvial action.*—I agree with all His Honour has said on this subject, and would be glad to see the right to enhance on account of fluvial action abandoned.

*Enhancement under section 43 (a).*—His Honour is of opinion that this is the most objectionable provision in the Bill, and wishes to see it struck out.

His Honour will no longer oppose initial rents being competitive, provided this section is cancelled.

As I understand them, His Honour's principal reasons for wishing to see this provision omitted from the Bill are as follows:—

*First*, that the rents of occupancy-raiyats will be unduly influenced by the rates the landlords will secure from new raiyats under the competitive system.

*Second*, that a "prevailing rate" no longer exists.

*Third*, that the prevailing rate deprives the occupancy-raiyat of protection.

Whatever difficulty there may be in ascertaining the prevailing rate, whatever abuses may have been allowed to creep in in the practical application of the rule, there can be no doubt that it is a provision of the law which the landlords have, for many years past, enjoyed the benefit of under several consecutive enactments, a provision of the law that they appreciate, and the deprivation of which they will resent as a bitter wrong. In resenting it as such, they will carry the sympathies of most people with them; the cancelling of this right will go far to justify their opinion of the Bill.

Although the Bill accords to every settled raiyat on an estate rights of occupancy in all land held by such settled raiyat in the estate on the 1st March, 1883, a raiyat, whether he be an occupancy or non-occupancy raiyat, can in the future only acquire occupancy-rights in any fresh lands he may acquire by lapse of time; therefore, as the section is drafted, the rents of occupancy-holdings will only be affected by any initial rents when the raiyats who acquire the fresh lands acquire occupancy-rights in those lands, *viz.*, after the lapse of twelve years from the time of acquiring possession of each such holding.

Again, the quantity of land left under the control of, or subject to the influence of, the landlord and through which the rents of occupancy-raiyats may be affected, will be comparatively small.

Thanks to the provisions of the Bill, there will, after the passing of the Bill, be few raiyats in the province not entitled to claim occupancy-rights in the lands they at present hold. Abandoned holdings and land freshly brought under cultivation, will alone remain to the landlord for the dreaded purpose.

Where the raiyats of this province have a tendency to being nomadic, the landlords have more trouble to retain them than to drive them away; the landlords must concede much to them; rackrenting their holdings is seldom to be feared.

The raiyats of well-settled estates may for one or two reasons abandon their holdings—owing to their being rackrented, or to their being in debt. When raiyats abandon their holdings owing to their being rackrented, it is not probable that the initial rent of the new raiyat will be a higher one; besides, the resident raiyats will in so much be gainers, that the rackrented holding will become a non-occupancy holding, and can no longer be taken into account when estimating "prevailing rates."

Should the raiyats abandon their holdings by reason of their indebtedness, with legalized transferability the landlords could hardly be the gainers.

Any effect that initial rents may have on prevailing rates must, from their nature, be very slow in their operation.

The rents of occupancy-holdings are not likely to be affected by the initial rents of newly reclaimed land, and, even when the raiyats who have reclaimed the land have acquired rights of occupancy in it, the rents of others can only be affected to an inappreciable extent by them.

Where the land lying waste on an estate is out of proportion to, or greater than, the cultivated area, we may be sure the uncultivated land helps to keep rates low; any attempt to demand higher rates for newly reclaimed lands than are being paid for occupancy-holdings on the estate would drive away raiyats, not attract them.

We may, I think, admit that it is very doubtful whether a prevailing rate in the hard-and-fast acceptation of the term adopted by His Honour ever existed over any wide extent of country. I certainly know of no district, estate or village in which one uniform rate exists for each class of land; but it should be borne in mind that the old Regulations declared that, where there were "no" pargana rates prevailing, "the collections were to be made according to the rate payable for land of a similar description in the places adjacent."

When we come to consider that the landlords of this country have from the remotest period been declared entitled to a certain fixed portion of the produce in lieu of rent, and the tendency of our laws has been to allow the raiyats to grow whatever crops they pleased on their lands, and to displace produce-rents by money-rents, it is but logical to declare that lands of equal value shall pay equal rates, and to allow one raiyat's rents to influence another's, more especially that fixity of tenure is by law attached to a holding.

To my mind the mistake lies in the application of the rule, not in its principle.

The Courts as a rule are satisfied to enhance the rent of a raiyat's holding when it is shown that the land in its "immediate" vicinity is paying a higher rent. This, I hardly think, was ever intended by "in the places adjacent." The rule as applied or interpreted by the Courts is often harsh in its action. To remedy the procedure of the Courts it is not necessary to deprive the landlords of a valuable right—a right that I consider just in principle. I would rather give the rule a wider range, and denote its application with an illustration.

If I might be allowed to make a suggestion, I would suggest that the sub-section should be allowed to run somewhat as follows:—"that the rate of rent paid by the raiyat is below the average rent paid by the occupancy-raiyats of the village."

I do not know if I have received a copy of Mr. Dampier's paper on the subject; if I have, I have mislaid it and cannot refer to it now; but, from the remarks made in paragraph 41 of the Government of Bengal report, the scheme he has propounded would have much the same effect as the above.

I am still of opinion that section 44 (*a*) should be omitted from the Bill.

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*Notes by the Hon'ble* T. M. GIBBON.

*Enhancement on ground of rise in prices.*

I AGREE with His Honour in deeming the above a legitimate and valid ground of enhancement, but I disagree with His Honour in thinking that it affords ample compensation to zamíndárs for the withdrawal of other grounds; nor do I agree with His Honour in deeming it necessary, or even right, to withdraw the power given to the Court under section 48, substituting a section which will direct the Courts to make an allowance for the increase in the cost of production previous to decreeing enhancement on account of a rise in price.

In discussing this subject His Honour has throughout his able minute accepted the lessons taught by political economists in England and their theories of "rent" as the basis of his argument. His Honour has, I think, (and I say it with diffidence), omitted to see that rent as understood by the political economist, and rent as it is constituted in this country, are not the same.

The term "rent" as understood by the political economists in England and "rent" as it exists in this country both denote the sum paid by the occupier of the soil for the use of its natural properties, and in so much it denotes the same in both countries; but the conditions under which the tenants of the two countries hold their lands and the authority of the landlords over their tenants, are so dissimilar, that with this translation of the term the similarity ceases. In England the landlord is the absolute proprietor of the soil, with power to evict a tenant should he decline to pay the rent demanded; and the only restraint on the landlord's

power to enhance is his fear of having his farm thrown on his hands; the landlord's "rent is a competitive rent, it is a share of the "profits" of cultivation. On the other hand, in this country the tenant may under the law acquire a right of occupancy in the soil; his landlord's power to evict him is restricted; and without the power to evict there can be no competitive rents.

From a very early period the landlord in this country has been entitled to a certain portion of the "outturn" of the crop as rent, in some places a larger, in others a lesser, share, but still a share of the outturn, not of the profit; be there profit or loss, his rents varied with the outturn; cost of production was no concern of his.

At an early period the British Government perceived that, as long as the landlord could demand a share of the crops as rent, valuable commodities requiring special knowledge, large means or incessant attention could not be grown, and determined upon encouraging the substitution of money-rents for rents in kind; where money-rents now prevail, thay are the direct outcome of the policy of the British Government.

There can, I think, be no doubt that the Government of Lord Cornwallis, when encouraging the substitution of money-rents for rents in kind, fully intended that the landlord should participate in the progressive prosperity of the country. Debarred from demanding competitive rents, to allow him to participate in the future prosperity of the country, the Government must "enable" him to do so, or he will otherwise be reduced to the position of an annuitant on his own estate. This can be best effected by allowing him to enhance on the ground of rise in prices.

His Honour approves of provision being made in the Bill for enhancement on the ground of rise in prices, but wishes to empower the Courts to make an allowance for an increase in the cost of production.

To effect this His Honour would strike out section 45 (*b*) from the Bill, substituting a new section for section 48.

Section 45 (*b*) declares that the Court shall not enhance the rent so that the enhanced rent exceeds the previous rent by more than four annas in the rupee.

This is again made subject to section 48, which declares that "the Court shall not in any case decree any enhancement which appears under the circumstances of the case unfair."

The enormous discretionary power hereby vested in the Courts under this section is, I believe, without precedent; without rules to guide the Court, it lays the Government open to the charge of leaving enhancement at the mercy or bias of the presiding officer and no longer governed by the law.

The only safeguard we have against the abuse of this power lies in the powers of supervision vested in the High Court, in all instances salutary, but insufficient to prevent loss of time and trouble to the litigants.

Wrong as I believe the section to be in principle, I would support the provision as it stands as a matter of policy.

Taking into consideration the extraordinary differences of rates paid for land in the same village, I do not see how the poor are to be protected if this section is not retained. Our Chumparun bighs varies from three to six standard bighás to one local bighá, and the rents of the raiyats vary from eight annas to eight rupees per local bighá in the same village. Under the Bill as it stands, the landlord would receive two annas increase on rise in prices from the one raiyat, and sixteen times that amount from the other; and, unless the Court has the power to declare that the raiyat is already paying a rent out of all proportion to the rent others are paying, great injustice may be done. This cannot be done by rule; it must be left to the discretion of the Court.

If some such discretionary power is not given to the Court, the effect of the rule will be such that the heavier the rent the heavier the enhancement.

I would beg of you to remember that the amount to be gained by the enhancement makes no difference in the cost of the suit.

If the rule His Honour wishes to lay down for the guidance of the Courts is adopted, all must be treated alike, and the poor will remain unprotected. Besides objecting to His Honour's suggestion that "the Courts should be authorized to make an allowance for increased cost of production" on the above grounds, I object to it on grounds apart from these. I object to it on its merits.

If His Honour had been content with suggesting that the Local Government should be authorized to omit a season of calamity or famine from the price-list of a district, or that the Courts should have discretionary power allowed them to do so, I would have supported the proposal; but I am not prepared to follow His Honour to the lengths he proposes to go.

His Honour presumes that any rise in prices would solely affect the landlord's share of the outturn. This, I think, is incorrect.

Without going into any minute calculation as to the exact shares into which the outturn is divided, we may assume that it is divided, roughly speaking, into three portions—one portion to cover cost of production to the raiyat, one to cover the landlord's rent, the third may be looked upon as the raiyat's profit; but whether the third share is profit on raiyat's cash capital or labour capital is of little consequence here.

Any rise in prices will directly affect the value of the whole outturn, not the landlord's portion alone.

The landlord's rent in this country is supposed to represent a share of the outturn, the share varying from one-fifth to one-half. To this he is, theoretically speaking, entitled what-

ever the value of the crop may be. The balance is the raiyat's, but how much of the balance may be considered cost of production, and how much profits for the subsistance of his family, no one can say. I think, in a country where holdings are very small and families very large, the farmer may consider himself repaid for his trouble when he is able to subsist by farming the ordinary food-crops of the country. If he wishes to live in affluence, he must turn his attention to the cultivation of more valuable crops.

The implements of the country are of the simplest kind; if they invest in improved patterns, they will do so with the hope of receiving a better outturn.

Draught cattle may become more expensive, but, as the raiyats are themselves the breeders of the cattle, it cuts both ways.

The labourer's wages are usually paid in grain; therefore, if the cost of production becomes heavier, so will the portion of the crop which goes towards paying for cost of production become more valuable.

I can think of only one way in which the cost of the production of staple food-crops can become greater without any proportionate increase in the value of outturn taking place, and that is by the extension of the cultivation of other and more valuable commodities to the displacement of the cultivation of staple food-crops—commodities which can, from their intrinsic value being greater, afford to pay higher wages and at the same time appropriate more labour.

But as the landlord cannot by any possible chance gain any direct benefit under the Bill from the cultivation of the more valuable commodities on his estate, excepting indirectly to the extent that the cultivation of them will force up the price of food, and as the whole benefit to be derived from their cultivation is to accrue to the tenant, it is not fair to debit the landlord with the extra cost of such labour.

I agree in the decision come to by your Select Committee that staple food-crops should alone be taken as the standard of value.

A province may be enriched by the extension of the cultivation of the more valuable commodities, but the very fact of a greater number of farmers taking to their cultivation, and increasing their supply, would assuredly reduce their marketable price

I agree with His Honour in thinking that the price of food-grains generally must, for some years to come, have an upward tendency, and I agree with His Honour in thinking that the prices ruling at the principal grain-mart of the sub-division should be accepted as the standard, as least liable to undue fluctuations.

I would prefer taking the average of the prices current during the whole year to taking the prices current at harvest-time, as being less liable to the influence of panic or speculation at a time of impending scarcity.)

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*Note by the Hon'ble* T. M. GIBBON.

I OMITTED to remark in my notes on "an allowance to be made for increased cost of production" that His Honour has in support of his argument cited the ruling of the well-known case of *Thakurani Dassee*. I would respectfully beg of you to read that ruling carefully, to see if it in any way supports His Honour's arguments.

Four Judges—Messrs. Trevor, Macpherson, Phear and Norman—supported the rule of proportion. Sir Barnes Peacock alone dissented, wishing to apply the lessons of the political economist Malthus.

In the case of *Thakurani Dassee*, Sir Barnes Peacock only repeated his former decision in the case of *Hills* v. *Ishwur Ghose*.

To learn what His Honour's Government thought in 1881 of this application of the abstract definitions of rent of Mr. Malthus by Sir Barnes Peacock to the law of this country, I would beg to refer you to page 81, Vol. I, of the Bengal Report. Without quoting all the Bengal Government then said of Sir Barnes Peacock's decision in *Ishwur Ghose's* case, I may be allowed to point out that the Bengal Government then thought that "this decision was at once felt by every one acquainted with revenue law and history to be a fatal blow to the customary rights of the whole cultivating class in Bengal."

*Enhancement on grounds of landlord's improvements.*

I agree with His Honour in thinking some limit may be placed on the landlord's power to enhance on account of improvements made otherwise than under an express agreement with his tenants. It is a mistake not to leave it open to the landlord and tenant to come to an understanding among themselves with reference to the return the landlord is to receive in the shape of "enhanced rents" (if it can be called rent, which it is not) for the capital he expends.

This can certainly be evaded by the landlord and tenant entering into an arrangement among themselves, that the landlord is to receive a certain amount of "interest" on any money he may expend on improvements.

It would then be, what it really is, a return for the capital he expends, not "rent." It is a serious matter to say that people who enter into arrangements of this kind with their free consent, and with their eyes open, believing that it will benefit themselves, shall be allowed to withdraw from their contract if the works erected turn out otherwise than as they expected. I am not prepared to go so far.

Take, for instance, the Sarun irrigation works constructed by Government on an understanding with the planters and zamíndárs that a certain amount per annum shall be paid to

Government as a return for their expenditure. Do you think the planters would be justified in withholding their subscriptions if the water did not benefit their lands?

I think in all such matters the people should be left to themselves. The tenant is just as likely to know what will benefit his lands, and what will not, as the landlord. I think it is impossible to limit in a Rent Bill the return one person shall agree to pay to another for capital expended.

*Enhancement under registered contract.*

Under the Bill as it was submitted to your Select Committee, a holding might be enhanced to the extent of six annas in the rupee, or 37½ per cent., provided the enhanced rent did not exceed one-fifth of the gross produce of the land, and the landlord was to be debarred from again enhancing the rent within a period of ten years.

Your Select Committee struck out the gross-produce limit, and limited enhancement under contract to 12½ per cent. for a period of seven years, and to 25 per cent. for a period of fifteen years.

Judicial enhancement may be effected to the extent of 50 per cent. increase on the former rents under the prevailing-rate rule, and to the extent of 25 per cent. on rise in prices.

That some restrictions should be placed upon voluntary enhancement, in order to protect the poorer class of raiyats, was, I think, admitted on all hands; but, with reference to the extent and nature of such restrictions, there was, I believe, much difference of opinion.

The reason assigned by the Government of Bengal for reducing maximum limit of enhancement, and for increasing the period for which it was to run, was the withdrawal of the one-fifth gross-produce limit.

His Honour now wishes to re-insert the gross-produce test, and again reduce the maximum limit from 25 per cent. to 12½ and to again increase the term.

Were I assured that the gross-produce test would work without friction, in other words, could possibly be applied, or that the Bengal Government could show me how they proposed to overcome my difficulty, I would unhesitatingly support their proposal as the very best means of preventing the poorer class of raiyats from being rackrented; but neither from the discussion which took place in Committee, nor from the minute now published, have I realized that they see their way to overcoming it, or even that the Government has realized wherein our difficulty lies.

His Honour has stated one of the objections to be "that the limit, though fair for particular localities and particular crops, might not be so for other localities and other crops."

To me it is not the matter of limit wherein the difficulty lies, but the practical application of the test. But in reference to the objection stated by His Honour no attempt is made to show how it can be got over.

With reference to the practical application of the test, I would beg of you to remember that the Bengal Government wish to take "specified" staples as the standard by which to test the value of the land, not the "particular" crop for which the land is suited, or "any crop" grown in the village.

For the sake of example, take wheat, barley, oats for the winter-crop test, rice and maize for the summer. The number of staples must at any rate be limited.

I am ready to admit that any jury consisting of practical farmers—men with a fair average amount of intelligence—would be able to estimate the probable outturn of any acre of land sown with any stated crop, provided the question is fairly put to them; that is to say, if they were asked "what would be the probable yield of such a field in an average season, if sown with wheat?" The amount at which it was estimated by each man would vary very little; but the difficulty does not lie here, or even with the jury. The difficulty lies in having to estimate the value of a field, the soil of which is only suited for special crops, by staples that the soil is quite unsuited to grow. Many fields that will not yield either rice or maize will grow good sowan, murroah, sweet potatoes, &c., &c.; many lands that will not yield five rupees when sown in cereals will yield fifty when sown with chillies, and *vice versâ*.

It seems to me that if the Government's proposal becomes law, the sum in arithmetic which each juryman will be required to solve will be—"If a field that will yield 20 maunds of a given cereal has to pay four maunds in rent, what is a field that will not yield anything in cereals, but will yield any amount of (say) cotton, to pay?" If this difficulty is overcome, the rest is only a matter of details.

Unworkable as I believe it to be, I would infinitely prefer seeing the test adopted than to be constantly reducing the limit

For six years the Bill has now been discussed and re-discussed, altered and re-altered, until the original is not recognizable in its present form. The special grievances that the Government intended to redress have been almost forgotten in the *interim:* our over-caution trenches very closely on indecision.

The changes and alterations now proposed by the Bengal Government in every portion of the Bill are so great, and so far-reaching, that they will necessitate a re-casting of the whole Bill, and with it at least another two years' discussion by the public.

The amount of injury that this would do the country, to both landlord and raiyat, I need not point out to you; I at least would look upon it as a calamity.

The relationship of landlord and tenant is now strained to its utmost; a little more and you will have the whole country on your hands. The zamíndárs are strongly impressed with the idea that the Government has no sympathy with them, and hardly expect to be dealt

fairly by. The raiyats measure their gains by the opposition of the landlords, and believe the millenium is at hand; another year of agitation, and you will, in order to govern the country, have to give them a sad awakening.

I should beg of you only to make such changes in the Bill as will permit of its being passed this Session; if it is not, or cannot be, passed this Session, I would pray of you to drop it. You will do more harm by allowing the discussion to go on for another year than you will remedy in five under the Bill. At any rate, do not let it appear as if every alteration now to be made in the Bill was to be a fresh restriction on the landlord; if voluntary enhancement must be restricted, give the landlords a set off by withdrawing the limit to be placed on judicial rents under the prevailing-rate rule.

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*Note by the Hon'ble* T. M. GIBBON,—*(dated 28th October, 1884).*

*Commutation.*

The commutation clauses in the Bill I do not like; I think the defendant will in each case be the sufferer.

I think commutation of rents should only be allowed when the raiyat wishes to cultivate a more valuable crop than the edible crops he has been in the habit of growing on his *bhaoli* land, and in this instance he should be bound to pay a full average of the proceeds of former years.

His Honour, on the contrary, would make these provisions still more stringent.

His Honour finds a proposal, supported by the high authority of Messrs. Dampier and Reynolds, that the commuted rent should not exceed the rent of the road-cess jamábandí, *plus* what rise in price may have occurred since the road-cess assessment was made. As final evidence against landlord or tenant, the road-cess jamábandís are worthless, and I hope I may be pardoned for saying so; but I doubt very much whether either of the above gentlemen ever examined the road-cess jamábandís on this point for themselves or they would hardly support such a proposal. The framers of Act X of 1871 fully intended that the jamábandís to be called for, for the road-cess assessment should be final evidence as against the zamíndár, and with that end in view made provision under sections 17 and 18 of the above Act to permit of any one who might consider himself aggrieved by the jamá entered against his name contesting its correctness.

This provision of the law was not re-enacted under Act IX of 1880, nor does Schedule A, Part II, necessitate the entry of all particulars of a holding; whereas the original Act required close scrutiny of the jamábandís, in order that they might in time become valuable evidence. The latter Act was enacted for fiscal purposes only.

The state of the Government exchequer at the time of the introduction of the Act necessitated rapid action instead of deliberate enquiry.

Jamábandis were accepted anyhow, and from anybody. The provisions of section 17 of Act X of 1871 were allowed to become a dead-letter.

Jamábandis, as a rule, do not show the gross produce of the *bhaoli* lands; they only shew the cash rent due by the raiyat for the undelivered portion of the putturn.

Raiyats, as a rule, do not pay road-cess to their landlords on their *buttayea* lands in this part of the country,

If you wish to declare any evidence final as against any person, first make it necessary to take papers from that person with his signature attached; papers that a person has never had an opportunity of examining should not be accepted as evidence against that person.

To introduce such a provision now may be dangerous; knowing with what object it would be introduced, unscrupulous people might be induced to lodge enhanced jamábandis.

*The non-occupancy-raiyat.*

Short of making occupancy-rights inherent in the soil, the provisions of this chapter go almost as far as it is possible to go to secure the non-occupancy-raiyat fixity of tenure.

The gross-produce limit, I do not think, can be introduced for reasons previously stated. Compensation for disturbance I do not approve of. I certainly am not prepared to support its re-introduction into the Bill at the cost of having to cancel sub-section (7) of section 60 of the Bill.

To re-introduce the compensation-for-disturbance clauses into the Bill, I deem it would be necessary to cancel the above sub-section, as it was introduced into the Bill at the request of the Bengal Government, and accepted by the Select Committee as a set-off to their non-acceptance of the compensation clauses.

If it is necessary to go any further in providing security of tenure to the non-occupancy-raiyat, declare that the initial lease shall be for a particular term.

*Bastu lands.*

I quite agree with His Honour in all he has said on this important subject.

Raiyats who erect their huts on their own holdings should, as a matter of course, hold the lands on which they are built on the same conditions as they hold the rest of their holdings.

The only point to be considered in reference to the above is the effect of transferability. When a raiyat sells his holding he will be obliged to transfer his hut with it as a matter of course; but this should be made quite clear.

A raiyat who is allowed to erect a hut on a village site should, as a matter of course, acquire a permanent interest in the land on which it is erected, but he should retain the land only for such purpose. Undisturbed possession for twelve months after erection of the building should, in all instances, be sufficient proof of right to remain on the land.

He can only acquire a site to build on with the consent of the landlord direct or implied.

If he abandon the site, the land in all instances, and in many districts the hut, reverts to the landlord. If the raiyat sells his hut or house, or it is sold up under a decree of Court, the material with which it is made is alone sold; the site reverts to the landlord. It is optional with the landlord to allow the purchaser to retain the site or give him notice to take away the material.

No raiyat has the right to cultivate any portion of the village-site without the direct consent of the landlord.

The raiyat's right to hold the land permanently for residential purposes should be assured. There can be no enhancement law for lands set aside for building purposes; the initial rent, if any, must be a matter of contract; the initial rent must be a permanent one.

For the sake of the village-community the landlord's power of veto, as above detailed, should be assured.

*Receipts and accounts.*

In reference to this subject I have from time to time said all I had to say. I would now only urge the Government to insist on all zamíndarí books of account, either tendered or summoned in evidence in a Court of law, being returned to their owners as quickly as possible.

The gentlemen who talk so fluently about insisting on all accounts being kept in bound books have no idea of the difficulties we encounter in recovering our books from the Courts, or the cost entailed, or the break that occurs in the routine of our business when they are so detained. I would beg of you to remember that books of account kept on large zamíndárís are as often called for by the Courts on other people's business as on account of their owners.

The delay in recovering books of account from the custody of the Courts is encouraging people to keep duplicate books, one for the Court and one for their own use; and I can hardly conceive anything more objectionable.

Make it possible for zamíndárs to keep their accounts in bound books, encourage them to do so, and the rest will follow as a matter of course.

*Proposals regarding pasturage, fisheries, and forest rights.*

In reference to the above, His Honour is of opinion that questions of enhancement of the rent, reduction of rents and acquisition of status should, be provided for in the Bill.

This appears to me, from the very nature of such tenures, an impossible task. To me it is quite new to hear that "pasturages, fisheries or forest-rights" are now, and ever have been, dealt with as on the same footing as "agricultural holdings." I have never heard of tenants being in a position to acquire occupancy-rights in them.

The law does not permit them to do so; I have never heard of tenants who held fisheries, excepting under terminable leases or permanent grant from their landlords. I have never heard of a tenant who was in a position to claim a right to hold the above at a judicial rent.

I will reserve what I have to say to the above being made subject to the incidents attached to an occupancy-holding, until His Honour's scheme with all its details, comes before your Select Committee.

His Honour is under the impression that, because some of the above items were included by your Select Committee in their form of rent-receipt and rent-account, they intended them to be looked upon as among the incidents of a raiyati holding. I do not remember anything occurring in Committee that would permit of such a construction being put on their being included in the account; and, had I thought it possible to put such a construction on their act, I for one would have protested against their being so included.

I think all the Committee intended was that each account should, if possible, show all that is due by one raiyat to his landlord. Pasturage in which alone there might be a possibility of the raiyat acquiring a right by long prescription, is not included in the account. Forest-rights, such as the right to gather fuel and cut timber, is not usually paid for on the area, but on the quantity taken. *Zulkar* or fruit depends on the season. *Zulkurs* or fisheries are usually settled under contract, and are in many places dependent on the rainfall of the season.

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*Note by the Hon'ble* T. M. GIBBON.

*Improvements—Acquisition of irrigation-channels for landlords.*

No portion of this otherwise most able report of the Bengal Government has astonished me more than those portions of it which refer to improvement; and I am very very disappointed at the decision come to by His Honour on the subject. I would fain hope that when His Honour once realizes how difficult it is for us, living in North Behar, to stave off famine without some such provision as was suggested in Committee being made in the Bill, His Honour will be induced to accede to our request.

His Honour cannot have realized the enormous difficulties both landlord and raiyat have to contend against in carrying out improvements against the wishes of a hostile raiyat. One hostile or obstructive raiyat may starve a village-community; and such difficulties will increase year by year as the public become better acquainted with the law.

At the risk of being tedious I would beg to remind you that the specific propositions submitted to your Select Committee were as follows:—

(1) If the landlord or any raiyat holding land in the vicinity is likely to be injured by the raiyat making an improvement, an appeal should be allowed to the Collector, who should be empowered either to allow or prevent such improvement, and whose decision should be final.

(2) On the application of the landlord or several raiyats jointly, the Collector or Sub-divisional Officer should be empowered to allow the cutting of irrigation-channels and arrange for the distribution of water generally.

(3) When, on the application of the landlord or on the joint application of several raiyats, the Collector makes arrangements for the distribution of water, he should be empowered to compensate individual raiyats who may suffer temporary or permanent loss by such acts.

(4) Such compensation to be paid into Court either before or after completion of work, as the Collector may decide.

I would beg to point out that the above would be to the benefit of the raiyats as well as to the benefit of the landlord. I would beg to remind you that a raiyat must in all cases bring water "to" his land and "across" some one else's land to irrigate his holding. He must cut a channel "to" his fields and "across" his neighbour's to irrigate his holding. Under the present law, if a landlord or a number of raiyats jointly dam up a stream to irrigate a village, the water cannot be carried through or "across" any raiyat's field without his consent. If a raiyat wishes to irrigate his land from a village-well, he must first procure the consent of his neighbours who hold land situated between his holding and the well before he can do so.

Any improvement that will affect large areas may temporarily affect a few injuriously, or, even if raiyat is not likely to be injured, he may still declare he is likely to be so, and prevent others from being benefited.

It was to take away one man's power to injure the many that the above resolutions were brought forward in Committee.

Every season that the rains cease unusually early the executive brings pressure to bear on zamíndárs to assist their raiyats to dam up the streams and to irrigate their lands to stave off famine; but the law does not protect either the official who wishes to assist the raiyats or the landlord who is willing to stand the cost. I would appeal to every Collector and Sub-divisional Officer who has served in North Behar in a season of impending scarcity to say how often they could have, and would have with the assistance either of the landlord or raiyat, staved off scarcity, had the law empowered them to act in the matter, or had they not feared a suit for damages being brought against them if they acted on their own responsibility. I would appeal to the records of their own Courts to show how often disputes about water end in a breach of the peace.

When it has once been agreed by both parties that an improvement is necessary, it becomes a matter of little importance whether the landlord or raiyat should have the prior right to make it.

I think a raiyat should in all instances be the best judge as to whether any alterations to be made on his holding be an improvement or not.

Insomuch as the Bill allows a landlord to make an improvement on a holding for the good of that holding, I do not approve of the section as it stands. A landlord may wish to cut a drain to drain the land; the raiyat may elect to retain the water.

If the raiyat wants the improvement, let him make it himself if he wants it; if he cannot ask assistance of his landlord; if he objects to it and does not think it an improvement, the landlord should desist from making it.

The Patna-Conference fully recognized the importance of the Collector's being empowered to act in an emergency, and the suggestion made by Mr. Henry and adopted by the Conference had that end in view; but they went much further than anything proposed in your Select Committee.

Their reply in the negative given to the question put by the Government of India I take to mean that they negative the idea of allowing distributaries to be cut where the landlord makes the improvement for the sake of profit, but would allow him to do it for philanthropic purposes. To this I have no objection; but I submit that under the resolutions submitted to your Committee the Collector would in all instances still remain the best judge as to whether an improvement should be allowed or not. If the landlord made it for the benefit of others without expecting any return, he could allow it to be made; if he made it for profit, he could refer him to the Civil Courts to prove his right to do so.

There are few among us who will not pay ample damages, or risk a suit for damages where it is necessary to stave off famine from the many; but most of us will think twice before we make an improvement if we have to be arraigned for trespass or mischief at the end of it.

*Measurements.*

I quite agree with His Honour in thinking a chain should in all instances be used for measurement; but I do not quite follow His Honour in what His Honour says about "lakhi-

ráji" lands. "Lakhiráji lands" I take to mean revenue-free lands, not "rent-free" lands.

Of the former I know of none in North Behar. Between revenue-free tenures and rent-free holdings a wide distinction is made.

At the time of the Permanent Settlement it was found that numbers of raiyats held lands free of rent from their landlords, who were sometimes zámíndárs, sometimes only thikadárs. A regular register was made of such holdings, and is known in Chumparun as the "*sun do kee buku.*"

All above a certain area (nominally 100 acres) were resumed by Government after the Permanent Settlement and revenue assessed on them, and zámíndárs were given permission—I may say pressed—to resume the others themselves, but only in very rare instances acted on such permission.

Again, under Act X of 1859, clause 28, gave the zámíndárs another chance, but again they refused to take advantage of it.

These grants and *bhirts* granted since the Permanent Settlement are for a specified area only.

Although they do not pay rent, they are exactly on the same footing as ordinary occupancy-holdings, and should not be specially legislated for.

In the majority of instances the holders acquired their lands under sufferance; their titles are perfected by prescription.

*Summary sale of registered tenures.*

I will reserve what I have to say on this chapter until the Select Committee meets—until we are informed which of the numerous suggestions for the more speedy realization of rents the Government will adopt.

I would now only submit a typical case which has come under my own experience as Manager of the Bettiah Estates, every figure of which I can vouch for, and it was for cases such as this that we asked for a more summary procedure for the realization of rents:—

| | | | |
|---|---|---|---|
| Burgown Tenure, consisting of 17 villages | Area 9,870 acres=29,610 standard bighás. | | Tenure-holder's collections, Rs. 13,500-4-3. |
| Revenue to Government by Rájá, Rs. 2,237-14-8. | Road-cess and public work-cess, Rs. 779-15-8. | Málikána to Bettiah Rájá, Rs. 208-8. | Total payable by tenure-holder, Rs. 3,226-6-4. |
| *Payable—* | | | |
| Collected last year by help of Courts, Rs. 2,074-15. | Have got another decree for Rs. 3,796-9-5, but not yet recovered. | This suit was commenced on the 18th August, 1883; decree obtained 16th July, 1884. | I have just had to institute another suit for Rs. 3,031-6-2. |
| Out of five years' rents, the tenure-holders have paid me Rs. 2,724-15-4 of their own free will without suit. | | The Maháráját of Bettiah has had to pay the revenue regulary under the sunset law. | |

His Honour is evidently under the impression that it is only the rack-rented raiyat who refuses to pay his rents and has to be sued by his landlord. I do not think the records of the Courts will bear His Honour out in this opinion. My experince certainly does not. One of the prime reasons given for the introduction of this Bill was the difficulty in the way of the landlords collecting their rents under the present law; but nothing has yet been done to redeem this promise; on the contrary, by taking away the landlord's power to evict a raiyat for non-payment of his rents and substituting sale under a decree of Court, we have materially retarded their colleqtion. However it may be done—by whatever means—the promise should be redeemed.

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No. 1926—1009 L.R., dated 28th November 1884.

From—H. H. RISLEY, Esq., Officiating Under-Secretary to Government, Bengal,

To—The Secretary to Government of India, LEGISLATIVE DEPARTMENT.

I am directed to submit, for the information of the Government of India, the accompanying copies of a representation from Mr. John Stalkartt on the Bengal Tenancy Bill, and to say that the Lieutenant-Governor desires to place it before the Government of India separately, as it has come too late to be conveniently included in the same volume with other reports.

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Dated 3rd November 1884.

From—J. STALKARTT, Esq., for the Raiyats of India,

To—His Honour the Lieutenant-Governor of Bengal.

Permit me, on the part of the raiyats, to thank Your Honour for forwarding their letters to Your Honour, so that the Government of India has published them in the Government Gazette, &c., &c. May I be allowed to bring to Your Honour's recollection my expressed opinion that the time allotted to the 14th August was not sufficient to express fully our views; also that the raiyats should be admitted to the conferences of the officials, and to the Legislative Council that the points under discussion might be brought down to as few as possible, to be submitted to the Legislative Council of India. In verification of the above, we quote from the report of

the Government of Bengal on the Bengal Tenancy Bill, 1884, pages 2008-2009, the opinion of the well-known Sadr Judge, Mr. Hawkins, who thus interpreted the Permanent Settlement. "The contention of the petitioners is that of the three parties—the State, the zamíndárs and the cultivators; the first had, without consulting the other two, virtually plotted out the map of the country, that it then distributed the different portions to individuals comprising the second class, defined most accurately the respective liabilities to the State, and required them to respect any claim against them, such as might then exist, on the part of *any individuals* of the *third party*. Nothing was left open for legislation as to the substantial rights of subsequent cultivators." This is begging the question; apply this principle to the present intended new Tenancy Law, namely, that it has no power over "subsequent cultivators." This will at once bring a smile on the countenance of every official and non-official—eh? The law for murder passed only for the punishment of the murderers of the date of passing the law against murder: therefore all the murderers since punished have been unjustly so. It is self-evident to every right-thinking man that such a state of things could never have been contemplated by *any law*. The Law was passed for the future cultivation of the soil, even for *waste lands* (see Regulation XLIV of 1793); the law for assessing waste lands, which of course at that time could not have been under cultivation, and must have "subsequent cultivators," at *the same rates as for lands then under cultivation*, in fact supported by Regulation IV of 1794, section 7, and by No. 54. Resolutions passed for the Permanent Settlement, respecting receipts of rents, which are divided into three parts only, namely, khudkásht, paikásht, and khámár. This settles the question of non-enhancement of rates of rent of all land; not a word respecting these receipts not applying to future cultivators, more particularly as the zamíndárs wish to claim waste lands as khámár lands, whereas by Regulation VIII of 1793 the zamíndár is strictly enjoined by section 52 to let the whole of the remaining lands, must be to "subsequent cultivators." As the legislature of that day is silent on this point, it classed all "subsequent cultivators" as having the rights of the cultivators of 1793—not a word for giving receipts to raiyats holding only a right-of-occupancy, *meáfee* pattás, tenants-at-will, &c., &c. We quote again page 2009: "This the Permanent Settlement of Bengal, whether good or bad, as a piece of fiscal policy, whether right or wrong as a political measure, was the result of mature deliberation, and to break it by round-about measures would obviously be worse from considerations of either kind" (Act X of 1859, &c., &c.). Then let the old form of receipt be restored with the penalty attached for non-fulfilment, "khudkásht, paikásht, and khámár," leaving not a section for raiyats with rights-of-occupancy only, meáfee tenants, or for tenants-at-will.

Many object to the record-of-rights being made on the principle that it will make disturbances. The record-of-right must accord with the receipts that the zamíndárs, like any other tradesmen, are forced to give, declaring in the bill the number and qualities of the goods sold. The raiyats ask nothing out of the ordinary routine of business. Of course, if the above is listened to by the Government of India, the whole chapter on enhancement of rent should be struck out, and the remaining legislation considerably altered to meet the requirements of the older Regulations, which this Bill professes to restore by Regulations VIII of 1793 and VII of 1882. There has been a great deal of injudicious talk, such as the "village-communities have been broken up in Bengal since long before the Permanent Settlement," &c., &c. "Such claims must have been extinguished by the conquering power having laid hands upon them, and made them over to the landlords of their choice." The same thing *versus* the above (see the petition to England before 1784) may be said with respect to the English proprietary right (miscalled so) of the zamíndárs, who were made only landholders by Regulation I of 1793, and all their proprietary right extinguished by Regulation XVII of 1793. "You shall not distrain the land and houses of the raiyats, not even his plough, his plough-bullocks, nor his seed for next year's crops." This is important, as the present intention of the Bill is to sell all the rights of the raiyat instead of distraining his personal effects: to sell him up contrary to the provisions of the Permanent Settlement is manifestly unjust. On a cursory perusal of the various memoirs of the Government officials, their want of knowledge of the principles governing the Permanent Settlement Regulation, VII of 1822, is very apparent, as their opinions are given irrespective of the rights conferred on the raiyats by the above settlement. By Regulation VII of 1822, with each settlement there was record-of-right. Your Honour desires that there should be record-of-right made for the whole of Bengal. Many of the officials support the idea of the record-of-right, but the zamíndárs do not want the rights of the raiyats to be entered in the record, &c., &c.

Another error of Sadr Judge Hawkins, page 2009: "The engagements of the time, it may be repeated, were made in respect of land," &c., &c No such thing: the lands are not divided into khudkásht resident, paikásht non-resident land, but the engagements are with the raiyat, if he resided in the village. Khudkásht resident raiyat, no matter what land he cultivated, the rates could not be altered; the same also with the paikásht non-resident raiyat, no matter what lands he cultivated; both were entitled to fixed rates, that is, no enhancement, of rates of rent. It is an error of the Courts to ask "what is the origin of the tenure?" It should be "what are the rights of this Bengali or raiyat?" Is he khudkásht or paikásht? The petition of the zamíndárs wish all to believe that their raiyats are all foreigners, and never lived in the village or any other village in Bengal.

We revert again to the Permanent Settlement. The officials by their memoranda would make us believe that the rates of rent were very carelessly settled. Even if they were, all that Regulation VIII of 1793 permits is a correction of the assessment not enhancement of rates of rent. For twelve years before the Permanent Settlement, the zamíndárs were yearly tenants-

at-will of their official status as zamíndárs (so all their proprietary claims must have been extinguished by the conquering power, page 2009); they had to collect all the revenue, and pay it into the treasury, every pice of it, and their accounts were rigidly scrutinised. The whole system was a very elaborate one of proportion (ratio) throughout; the lands were divided into aouel, doem, tertium, 1st, 2nd, 3rd, 4th quality for paddy land, the same for middle land, the same for *dhee* (high land), *purtee* or grazing land, and between each set of land the ratio or proportion (proper) was established; so no matter what land a raiyat ploughed he was not under the burden of inequality when he sold his crop in the open market. Now, if a zamíndár, at the passing of Act X of 1859, or before, went to court and stated that the raiyat was not paying *the* prevailing rate, ten to one he was stating an untruth. Suppose him successful, and he has gained his suit, and broken the rate of any one class of land, say, the 2nd quality, then the ratio of this 2nd quality to all the other lands of the village is broken, and the equilibrium upset respecting other villages. No wonder former Moslem sovereigns never broke the standard assessment, but regulated the money they required by a percentage on the *asul* or standard assessment, so that the country was not demoralised as it is now by Act X of 1859. It is perfectly agreed to by Lord Cornwallis that the making of *abwábs* is a royal prerogative, and does not belong to the zamíndárs; so that if the above principle is carried out, the claim of the zamíndárs to enhancement of the rate of rent has been long ago extinguished by the conquering power. The rights of the zamíndárs are to be racked up, but the rights of the village-communities are not to be thought of, though only as late as 1793 (see No. 54, Permanent Settlement papers, up to that date) the villager had to pay the rents, not his own only, but the rents of those that ran away; so the assertion that the rights of village-communities of Bengal have been broken up in Bengal since long before the Permanent Settlement is a downright untruth. This is not evenhanded justice.

The zamíndárs by their spokesman, the Rájá of Darbhangá, page 1868, speak of the Permanent Settlement as the Magna Charta of the rights of the zamíndárs and raiyats in other words, one of the fundamental laws of this realm under the "Empress of India, Kaisir Hind," which it would be treason for any legislature to break. We raiyats of India, are quite willing that it should be so, and earnestly beg that Your Honour will institute a Court to try the rights of the zamíndárs and the rights of the raiyats by professional barristers on both sides If these points of non-enhancement and non-ejectment are not determined, it is useless to ask opinion of gentlemen, official and non-official, for the points of dispute are not determined by such a course of action, and matters remain *in statu quo* unless it is determined to ignore *the Permanent Settlement and make fresh legislation.* If so, by Sadr Judge Hawkins, there were three parties to the Permanent Settlement—the State, the zamíndárs and the cultivators—and in the Bengal Tenancy Law the rights of the State are omitted. If is intended to give the zamíndárs anything above the 10 per cent. of the Permanent Settlement, then it is nothing but right that the portion belonging to the State should be increased in the same proportion. We refer to page 1722 by Mr Finucane, respecting the village of Jaezpotee, being 500 per cent. above its original assessment. A zamíndár of Burdwan five times, of Dinájpur twice, a zamíndár of Darbhangá thirty-eight times the surplus over Government revenue, &c. &c. We may make a general average of all zamíndárís that their present rental is five times the amount that they pay to Government under the Permanent Settlement; in other words, their right to the rental is Rs. 100, but their present collections are Rs. 5,000, Rs. 4,000 of which they retain, instead of the above Rs. 100, and yet they say that they cannot collect their rents, and want a summary law of distraint; therefore, it is nothing but fair in the new order of things that the Government should have at least 50 to 75 per cent. of the collections of the zamíndárs. Then the Road Cess and Public Works Acts may be cancelled, for they press very hard upon the raiyats. If they cannot pay their present assessment, how can they possibly be expected to pay these new Government taxes? Your Honour is well aware that there are six or seven millions of raiyats so poor that they are unable to resist the zamíndár in any shape, and particularly the idea in the new Bill that if they do not agree to enhancement they will be summarily ejected. Let me recall to Your Honour's mind the history of Jonah, whom God sent to give warning to Nineveh. Most people are taken with the romantic portion of the story that Jonah remained in the whale's belly three days and three nights, but the moral does not lie there, but in the last verses of the 4th chapter of Jonah: verse 2nd—"For I knew that thou art a gracious God and merciful, slow to anger and of great kindness, and repenteth thee of the evil"; Verses 9, 10, 11—"And God said to Jonah, Doest thou well to be angry for the gourd? And he said: I do well to be angry even unto death. Then said the Lord: Thou hast had pity on the gourd, for the which thou has not laboured, neither madest it to grow, which came up in a night, and perished in a night; and should I not spare Nineveh (that repented), that great city, wherein are more than six score thousand persons that cannot discern between their right hand and their left hand and also much cattle?"

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Dated 24th November 1884.

From—Babu Umesh Chundra Ghosh, Senior Pleader, Jessore,

To—The Secretary to the Government of India, Legislative Department.

I have the honour request the favour of your placing the accompanying memorial of the tenureholders of the Sadr Sub-division of Jessore in the hands of the members of the Legislative Council.

*Memorial of Middle Tenure-holder of Sadr Sub-division of Jessore.*

*To His Excellency the Viceroy and Governor General of India in Council.*

The humble memorial of middle tenureholders of the Sadr Sub-division of Jessore—

MOST HUMBLY SHEWETH—That the question of middle holding forms an important element in the land law of the country; but, unfortunately, this question has not received a fair share of consideration at the hands of the authorities.

That, owing to such an inadequancy of consideration and attention to this question, the just interests and rights of the class of tenureholders to which your memorialists belong have not been duly cared for in the Tenancy Bill pending before Your Excellency's Council.

That Your Excellency's memorialists therefore crave leave to approach Your Excellency with this humble memorial, briefly stating the points on which the Bill, both by commission and omission, would inflict injustice on Your Excellency's memorialists and others of the same class.

First of all, Your Excellency's memorialists will humbly say that the system of middle holding as it prevails in the country is in no way harmful, and has nothing in it to deserve discouragement. On the contrary, it is a beneficial institution and deserves encouragement.

By this system, small groups of tenants are placed under small landlords of moderate pretensions; whereas in the absence of it the tenants are subjected to the evils which result from their being placed under the charge of mercenary agents of big zamindars.

There is a touch of sympathy between the tenureholders and the raiyats under them, for mostly they are in personal contact with each other, and thus a sort of personal kindly relation springs up between them.

It is thus that the system of middle holding in this country is conducive to the good of the society, and, accordingly, with the instinctive support of the society, it has become a deep-rooted institution of the country.

The British Government in India, however, has unfortunately never shown any sympathy towards this good institution. But Your Excellency's memorialists submit that never before was such signal injustice intended to be inflicted on middle holders as that contemplated by the present Tenancy Bill.

The existing law for protecting middlemen holders from undue exactions and arbitrary ejectments are to be found in section 51 of Regulation VIII of 1793 and sections 16 and 17 of Act VIII of 1869.

The Tenancy Bill would repeal sections 16 and 17 of Act VIII of 1869 (B. C.) as well as section 51 of Regulation VIII of 1793, reproducing them only in a very curtailed and restricted form.

Section 51 of Regulation VIII of 1793 is a general provision and is applicable to all middle tenures irrespective of the dates of their creation. It runs thus:—

"The following rules are prescribed to prevent undue exactions from the dependent taluqdars:—

"(1) No zamíndár or other actual proprietor of land shall demand an increase from the taluqdárs dependent on him, although he should himself be subject to the payment of an increase of jama to Government, except upon proof that he is entitled so to do either by the special custom of the district or by the conditions under which the taluqdár holds his tenure: or that the taluqdár by receiving abatements from his jama has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

"(2) If in any instance it be proved that a zamíndár or other actual proprietor of land exacts more from a talupdár than he has a right to, the Court shall adjudge him to pay a penalty of double the amount of such exaction, with all costs of suit to the party injured."

Thus, there is nothing in the above section to restrict its operation to tenures which have been held from the time of the Permanent Settlement, and to make it inapplicable to tenures which have been created subsequently to the Permanent Settlement.

The present Bill, however, would restrict the operation of it to tenures held from the time of the Permanent Settlement, as is seen in section 6 of the Bill, which is meant for a substitute for the above section of Regulation VIII of 1793. Section 6 of the present Bill runs thus:—

"6. (*1*) Where a tenure has been held from the time of the Permanent Settlement, its rent shall not be liable to enhancement except on proof—

"(*a*) that the landlord under whom it is held is entitled to enhance the rent thereof either by local custom, or by the conditions under which the tenure is held, or

"(*b*) that the tenure-holder, by receiving reductions of his rent, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

"(*2*) A reduction of rent granted to a tenureholder on account of diluvion or for land taken under the provisions of any enactment for the time being in force for the acquisition of land for public purposes or companies shall not be deemed a reduction within the meaning of this section."

Thus, the first line in the section, namely, the expression "where a tenure has been held from the time of the Permanent Settlement," is a new addition which narrows the meaning of the whole provision as compared with the provision of the Regulation. By this addition, the

Bill would leave wholly unprotected all tenures which came into existence after the Permanent Settlement. This alteration destroys the very essence of section 51 of Regulation VIII of 1793, and no reasons whatever have been given to justify this alteration.

Such a change, Your Excellency's memorialists humbly submit, would be a fatal blow to the rights and interests of the class to which Your Excellency's memorialists belong.

Then, again, there is no reason whatever why the Bill would repeal sections 16 and 17 of the present Rent Act and would reproduce them with two restrictions limiting their operation.

Sections 16 and 17 of the present Rent Act run as follows:—

*Section XVI.*—"No dependent taluqdár or other person possessing a permanent transferable interest in land intermediate between the proprietor of an estate and the raiyat, who, in any province to which the provisions of this Act may apply, holds his taluq or tenure (otherwise than under a terminable lease) at a fixed rent which has not been changed from the time of the Permanent Settlement, shall be liable to any enhancement of such rent, anything in Section LI Regulation VIII of 1793, or in any other law to the contrary, notwithstanding.

*Section XVII.*—"Whenever, in any suit under this Act, it shall be proved that the rent at which a taluq or other tenure is held in the said provinces has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that such taluq or other tenure has been held at that rent from the time of the Permanent Settlement, unless the contrary be shown, or it be proved that such rent was fixed at some later period."

The above two sections were the only provisions in favour of middle class holders in addition to section 51 of regulation VIII of 1793. Your Excellency's memorialists venture to say that to curtail them and to add conditions to them would be to destroy the little status the middlemen had, and this the Bill intends to do without any reason or without any complaint from any quarter against the said provisions.

The above two sections of the present law are reproduced in section 64 of the Bill, which runs as follows:—

"64. (*1*) Where a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the holding.

"(2) If it is proved in any suit or other proceeding under this Act that a tenureholder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed during the twenty years immediately before the institution of the suit or proceeding, it shall be presumed, until the contrary is shown, that they have held at that rent or rate of rent from the time of the Permanent Settlement:

"Provided that, if it is required by or under any enactment that in any local area tenancies or any classes of tenancies at fixed rents or rate of rent shall be registered as such on or before a date specified by or under the enactment, the foregoing presumption small not after that date apply to any tenancy or, as the case may be, to any tenancy of that class in that local area which has not been so registered."

It will be seen the exception introduced in clause (1), that is, the words "except on the ground of an alteration in the area of the holding," is new. This exception would neutralise the effect of the section partially, and would unsettle the rents of old tenures and make them open to enhancement for the first time.

Again, the proviso to clause (*2*) threatens to undo entirely the presumption provided for by clause (*2*). This proviso is in fact a fatal blow to the rights and interests of your petitioners as a class.

Your Excellency's memorialists humbly submit that to make the alterations referred to would really be to destroy the vested rights of an important class of subjects.

The above are the complaints of your memorialists against the injustice which the new Bill would inflict on them by way of commission. Your Excellency's memorialists would, in the next place, mention some matters which constitute the defects of the present law as regards the rights of the middle holders. These defects your memorialists have good reason to ask Your Excellency to remove. The Bill by omitting to remove them would not be just to your memorialists.

One great defect of the present law with regard to tenure-holders is that, except in cases of tenures created by deed, unless a tenure be as old as the Permanent Settlement, at all events presumably as old, there is no express law to protect the holder of the tenure from ejectment.

If twelve years' holding by a raiyat adds to his rights, if a man holding land for twelve years by sheer wrong acquires absolute ownership, there is no reason whatever why a middleman who has been allowed to hold for twelve years without any express contract should not acquire some benefit.

The Courts have sometime felt the weight of the above reason. Accordingly, in some cases it has been decided that, where a middleman has held for twelve years as such, the zamíndár could not eject him. The case of *Ruttun Moni Davia* v. *Kamala Kanta Talugdár*, reported in 12 W. R. 364, is in effect such a case.

Your Excellency's memorialists pray that a section be introduced in the present Bill providing that, where a tenure-holder has held for twelve years, he shall not be ejected from the holding so long as he pays a fair and equitable rent.

Then, as regards enhancement. For cases in which there is an absence of any contract or local custom to regulate the rent of a tenure, the legislature should provide an equitable and fair principle to regulate the enhancement of the rent. The present law does not provide any principle for such cases.

The present Bill has some provisions on the subject; but these are by no means adequate or fair and equitable. The Bill provides that the enhancement must be so as to leave to the middleman holder not less than ten per cent. of the nett proceeds. This is not just, nor does this amount to providing a principle of enhancement.

The above provisions of the Bill proceed on an assumption that the tenure-holders have no right to the land which they hold, that they are mere collectors of rent. Your Excellency's memorialists need hardly say that this is a grievously mistaken assumption. The tenure-holders have a right of property, and, as having such rights, they should be protected against excessive and rackrenting enhancement.

Your Excellency's memorialists pray that some equitable rule of enhancement be laid down. It would be an equitable principle of enhancement to lay down that the enhanced rent shall not bear a higher ratio to the nett proceeds for the time being than the old rent bore to the old net proceeds, and also to lay down that no claim of enhancement shall lie except on the ground that there has been an increase of the nett proceeds otherwise than at the expense and labour of the middleman holder.

Without such a provision, the law would lead to hardship both to middlemen and cultivators. For, without such a provision, the Courts will be left to act arbitrarily as at present, and, in consequence, middlemen will be rack-rented, and they, in their turn, will naturally try to recoup themselves by imposing arbitrary cesses and *abwabs*. They will not resort to legal steps to enhance the rents of raiyats under them. For they will not be able to avail themselves of the fruits of such legal enhancement. They will therefore be driven to impose cesses. Your Excellency's memorialists pray that Your Excellency will remove the reasons which might lead to such an unsatisfactory result.

Your memorialist would humbly further pray that Your Excellency would be pleased to appoint in the Legislative Council a member who might represent the interests of the middle tenure-holders. Zamíndárs and raiyats are well represented in the Council. It will be, therefore, an act of justice, your memorialists humbly submit, to take in a representative of the middle tenureholders.

Your Excellency's memorialists earnestly pray that Your Excellency will take your memorialists' representations in Your Excellency's favourable consideration, and will be pleased to do utice to their rights and interests.

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Dated 5th December 1884.

*From*—Babu Rajkissore Mookerjea, *Utterparah*.

*To—The Secretary to the Government of India*, Legislative Department.

I have the honour to submit herewith a memorial on the subject of the Bengal Tenancy Bill, numerously signed by Bengal raiyats and addressed to His Excellency the Viceroy, and I request the favour of your laying it before His Excellency. I also forward 70 spare copies of the memorial.

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*To His Excellency the Viceroy and Governor General of India in Council.*

The humble memorial of the undersigned raiyats of Bengal.

Most Respectfully Sheweth,—That your memorialists beg leave to refer in their present memorial to only one of the provisions of the Bengal Tenancy Bill considering it to be of especial importance and not implying that they entirely approve of all the other provisions.

2. That your memorialists are anxious that with regard to the twenty years presumption in relation to tenure-holders and raiyats the existing law should continue unaltered and they crave leave to quote the following passage from the report of the Government of Bengal No. 1906 T—R, dated the 15th September 1884. "In the first place, then, the Lieutenant-Governor calls special attention to the enormous preponderence of evidence in favour of retaining the presumption as it now exists. The Patna, Burdwan Presidency, Dacca and Orissa Conferences are unanimously against any change. The Bhagulpore Conference (by a majority) and Mr. Lowis would allow a sufficient time for registration, and then annul the presumption. The Rajshahye Conference alone would give the raiyat two years in which to *sue* for the establishment of the presumption or forfeit his privilege—a proposition which the Lieutenant-Governor would absolutely reject as affecting a right which the ryots have enjoyed under the present law since 1859, and as tending to extreme litigation. Of the judicial officers, a very few would annul the presumption altogether, a larger proportion would modify it while a still greater number would retain it unchanged. Thus the Lieutenant-Governor feels himself fully justified in saying that the weight of authority is against any alteration."

8. That your memorialists notice with very great regret the recommendation of the Government of Bengal that the presumption aforesaid should run from 20 years before passing the Bill.

4. That your memorialists submit that if the recommendation aforesaid were carried into effect the principle of the presumption would be destroyed, for the burden of proof would in reality be shifted on to the shoulders of the raiyat. The Government of Bengal has rightly spoken of "the proverbial carelessness of most raiyats in preserving receipts" and the "ease with which Zemindars can refute the presumption if falsely raised." If in order to avail himself of the presumption the raiyat must prove twenty years' possession previously to the passing of the present Bill, in course of time his difficulty of offering the proof would be about as great as if he had to prove actual possession at a uniform rate from the Permanent Settlement. For instance, if the Bill were passed this year, a raiyat in order to avail himself thirty years hence of this presumption would require to be possessed of receipts as old as fifty years. As years go on the difficulty will be enhanced. It therefore, appears to your memorialists that in a very short time the presumption will be practically inoperative and the burden of proof which now rests on the Zemindar will be passed on to the raiyat. To modify the presumption in the way recommended by the Government of Bengal would be in effect to take it away. The difficulty of proof which the raiyat will experience will be cumulative; and practically there would be an absolute bar to his claim to hold as a fixed-rate tenant.

5. That your memorialists having considered the provisions of the Bengal Tenancy Bill with regard to record of rights feel bound to declare that those provisions afford no compensation to the raiyats for the loss inflicted on them by the taking away of the twenty-years' presumption.

6. That your memorialists, while admitting the necessity of having a record of rights where the landlord or tenant desires it or where the preparation of such a record is calulated to settle an existing dispute or avert an impending one, are nevertheless convinced that a record of rights so far from giving to the raiyats a substantial advantage in substitution for the twenty years' presumption will produce injurious consequences. In support of this view your memorialists beg leave to quote the following passage from a Memorandum by Mr. H. J. S. Cotton, Officiating Commissioner, Chittagong, dated the 10th July 1884. "To introduce a settlement of rents and record of rights in Bengal generally will merely excite disputes and kindle litigation. The normal relation of landlord and tenant in these provinces is one of compromise; it is true that rights are unadjusted, the balance of rent is undetermined, the current demand of rent is not fixed, the area of cultivation is often unknown; it is for the convenience of both parties that the claims of either are not put to the test and yet it is not the case that the ordinary relations between landlord and tenant are unfriendly. * * * All that was elastic and unsettled will, under the new procedure, be stereotyped and fixed, and both parties will struggle with one another to the utmost in the civil courts in order that disputes may be decided which would never have arisen if the Surveyor's rod and Settlement Officer's registers had not galvanised them into life. It is difficult to over-estimate the bitterness of feeling which a survey and record of rights will thus provoke. The evil I think will outweigh any administrative advances derived from it. I venture also to think that most persons who are competent from their experience and knowledge of these provinces to form an opinion on the subject, will be found to agree with me in this deliberate conclusion that a survey and record of rights, if it is calculated to settle disputes where they already exist, is equally calculated, where they do not, to call them into existence."

7. That your memorialists submit that having regard to the history of land tenures in Bengal it would appear that the provisions of Act X of 1859 which led down the twenty years' presumption did not merely declare a rule of the law of evidence, either arbitrarily or only upon considerations of convenience, but sought to put a bar to enhancement wherever rent had been paid at a uniform rate for twenty years. Para. 225 of Mr. Shore's Minute of June 1789 published as Appendix I to the Fifth Report says: "There are two other distinctions of importance also, with respect to the right of the raiyats. Those who cultivate the lands of the village to which they belong, either from length of occupancy or other cause, have a stronger right than others, and may, in some measure be considered as hereditary tenants, and they generally pay the highest rents. The other class cultivate lands belonging to a village where they do not reside; they are considered as tenants-at-will; and having only a temporary accidental interest in the soil which they cultivate will not submit to the payment of so large a rent as the preceding class, and when oppressed, easily abandon the land to which they have no attachment." It appears from the above that the maximum rents were paid by the tenants who had a "length of occupancy." Tenants who had held for a long time at a uniform rate could not have their rents enhanced, for they already paid the "highest rents." The legislators of 1859 made the requisite "length of occupancy" definite by fixing it at twenty years; and the presumption was intended to declare the immunity of raiyats who had enjoyed this "length of occupancy" from enhancement. If the presumption was irrebuttable the immunity would have been absolute; but in so far as it was left open to the zamindar to rebut it, it was only a partial protection that the raiyat obtained. A sort of compromise was thus effected. For the liability to enhancement newly imposed on the raiyat the only compensation or consolation that was given to him was that occupancy for

twenty years at a uniform rate would make it as difficult as possible for the zamindar to get an enhancement. To take away the benefit of the presumption now would be to deprive the raiyat of one of the very few safeguards which he enjoys against arbitrary enhancement.

8. That your memorialists, therefore, pray as follows: that the twenty years' presumption in relation both to tenure-holders and raiyats may be retained as it exists under the present law.

And your memorialists as in duty bound shall ever pray.

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No. 2002—1038L. R., dated 4th December, 1884.

From—A. P. MacDonnel, Esq., Secretary to Government, Bengal,

To—The Secretary to Government of India, Legislative Department.

In continuation of my letter No. 1906T.R. of the 15th September, I am desired by the Lieutenant-Governor to forward the accompanying statements, supplied by the Registrar General of Assurances, of the extent to which leases and mortgages of land held on occupancy-titles have been registered in the various registration-offices of the province of Behar.

## Statement No. I.

*Return of Leases of Land held under Occupancy Titles registered in the following nine districts of Behar during the years 1881—83.*

| Number. | District. | 1881. | | 1882. | | 1883. | | Total. | |
|---|---|---|---|---|---|---|---|---|---|
| | | Number of leases registered. | Area leased (standard bighas of 14,400 sq. feet). | Number of leases registered. | Area leased (standard bighas of 14,400 sq. feet). | Number of leases registered. | Area leased (standard bighas of 14,400 sq. feet). | Number of leases registered. | Area leased (standard bighas of 14,400 sq. feet). |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 1 | Chumparun | 1,860 | 75,981·0 | 1,888 | 1,60,986·5 | 1,797 | 71,254·7 | 5,545 | 3,08,223·1 |
| 2 | Mozufferpore | 494 | 3,572·5 | 858 | 5,075·5 | 1,087 | 7,740·2 | 2,493 | 16,388·2 |
| 3 | Durbhanga | 351 | 3,686·1 | 366 | 3,986·1 | 421 | 3,291·6 | 1,138 | 10,963·8 |
| 4 | Saran | 46 | 684·8 | 75 | 953·1 | 147 | 1,115·8 | 268 | 2,753·7 |
| 5 | Gya | 58 | 1,714 | 37 | 460·2 | 52 | 521·4 | 147 | 2,695·6 |
| 6 | Patna | 69 | 562·1 | 47 | 605·3 | 72 | 604·4 | 188 | 1,771·8 |
| 7 | Shahabad | ... | ... | ... | ... | ... | ... | ... | ... |
| 8 | Monghyr | 85 | 1,201 | 105 | 1,565 | 67 | 705 | 257 | 3,471 |
| 9 | Bhagalpore | ... | ... | ... | ... | ... | ... | ... | ... |
| | Total | 2,963 | 87,402·4 | 3,376 | 1,73,631·7 | 3,643 | 85,233·1 | 9,982 | 3,46,267·1 |

This Statement No. I includes *zerpeshi* leases.

## Statement No. II.

*Return of Mortgages of Land held under Occupancy Titles registered in the following nine districts of Behar during the years* 1881—1883.

| Number. | District. | 1881. | | 1882. | | 1883. | | Total. | |
|---|---|---|---|---|---|---|---|---|---|
| | | Number of mortgages registered. | Area mortgaged (standard bighas of 14,400 sq. feet). | Number of mortgages registered. | Area mortgaged (standard bighas of 14,400 sq. feet). | Number of mortgages registered. | Area mortgaged (standard bighas of 14,400 sq. feet). | Number of mortgages registered. | Area mortgaged (standard bighas of 14,400 sq. feet). |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 1 | Chumparum | 441 | 14,635·5 | 558 | 16,372·6 | 702 | 17,202·8 | 1,701 | 48,210·9 |
| 2 | Mozufferpore | 368 | 3,137·3 | 499 | 3,526·5 | 720 | 5,179·6 | 1,587 | 11,813·4 |
| 3 | Durbhanga | 261 | 3,113·9 | 200 | 2,577·7 | 295 | 3,883·3 | 756 | 9,574·9 |
| 4 | Sarun | 983 | 4,230·7 | 1,547 | 6,414·8 | 1,619 | 6,918·1 | 4,149 | 17,563·6 |
| 5 | Gya | 71 | 1,125·3 | 80 | 1,761·1 | 94 | 2,034·3 | 245 | 4,920·7 |
| 6 | Patna | 217 | 2,226 | 178 | 2,195·3 | 188 | 2,028·7 | 583 | 6,450 |
| 7 | Shahabad | 81 | 1,264·9 | 71 | 9,10·4 | 146 | 1 859·3 | 298 | 4,034·6 |
| 8 | Monghyr | 397 | 7,251 | 483 | 7,201 | 523 | 9,421 | 1,403 | 23,873 |
| 9 | Bhagalpore | 121 | 3,047·1 | 115 | 3,061·7 | 159 | 3,535·8 | 395 | 9,644·6 |
| | Total | 2,940 | 40,031·7 | 3,731 | 44,021·1 | 4,446 | 52,062·9 | 11,117 | 1,36,115·7 |

No. 2013—1041 L.R., dated 4th December 1884.

From—H. H. RISLEY, Esq., Officiating Under-Secretary to Government of Bengal,
To—The Secretary to the Government of India, Legislative Department.

I have the honour to submit, for the consideration of the Government of India, the accompanying papers noted on the margin, containing the opinions of certain officers on a pamphlet by Bábú Mohiny Mohun Roy on the procedure sections of the Bengal Tenancy Bill.

Demi-official letter from Mr. J. Tweedie, dated 16th November 1884.
Letter No. 1116, dated 13th November 1884, from District Judge of Furreedpore.
" No. 1445, dated 20th November 1884, from Judicial Commissioner of Chota Nagpore.
" dated 21st November 1884, from 2nd Sub-Judge, Tipperah.
" No. 481, dated 21st November 1884, from District Judge of Sarun.
" dated 22nd November 1884, from Munsif of Serajgunge.
" No. 34, dated 22nd November 1884, from Sub-Judge of Burdwan.
" No. 8, dated 24th November 1884, from Sub-Judge of Backergunge.
" No. 75, dated 24th November 1884, from 1st Munsif of Sudharam.

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Dated Arrah, the 10th November, 1884.

Demi-official from—J. TWEEDIE, Esq., District and Sessions Judge,
To—The Secy. to the Government of Bengal, Revenue Dept.

I have to acknowledge receipt of your demi-official note dated Darjeeling, the 21st of October, and of the pamphlet therewith sent. As requested in the note, I have to make the following remarks on the pamphlet.

As far as the author has reached in the two parts of his subject as yet treated of by him, he deals first with procedure connected with under-tenures—of which the "putni" may be taken as the principal and the type—and then with suits and sales in ordinary rent suits.

As regards the former, the main proposals are, first, that they should be registered by the court of the Subordinate Judge; and that thereafter—proceedings for arrears of rent shall be taken by an "application" for their realization, being treated as a "declaratoy decree" that they are due—all objections being heard finally by the court which executes, in the same way as courts now deal with objections in ordinary execution cases. The great advantage claimed for this procedure is that it will absolutely exclude any subsequent civil suit to set aside the sale.

I think that to make "registration" the work of judicial officers is a new suggestion which cannot be entertained unless Government is prepared to grant a large increase to our civil staff. Whatever may have been the case some years ago, it is not the case now that Collectors are overburdened with work. The press of work at the present day is on the judicial branch of the Administration. It would therefore be desirable, in order to avoid cause for increased expense on the civil side, to have "permanent tenures" registered, if they are to be registered, by the collectorate agency, with power to it to make a reference to the Civil Court as in registrations under Bengal Act VII of 1876.

As to the necessity of registering these tenures, I admit that I do not see it. I am a strong advocate for registration: but of all things which can be registered, I think these tenures least of all require registration, and that for the sufficient reason that no dispute, as a rule, ever arises as to their existence, extent, or the terms on which they are held.

Next as regards the state of things under the present (or proposed new draft) law; *vide* pages 6, &c., of the pamphlet. There we will find it said that Regulation VIII of 1819 "has worked very successfully." Why then disturb it? Again, we are told that the existing procedure by suit and decree results in this, that "in nine cases out of ten the amount of the decree is paid up" (page 7). What better result than this can be looked for from any procedure?

"In a few instances sale takes place, and then a proceeding or suit for setting it aside invariably follows. Take it that this is the "invariable" result. It is for these "few instances" that the new procedure has been elaborated, the author being forgetful of the risk of bringing into dispute the nine-tenths regarding which he has told us that the present law works satisfactorily, and that disputes are settled by the amount being paid out of court.

My own experience is not in accordance with that of the author of the pamphet, where, at the end of the first paragraph on page 7 and elsewhere, he says that a large amount of litigation springs from attempts to upset sales of permanent tenures. This litigation does occur; but it forms an infinitesimal part of the general body of litigation with which courts have to deal. The "one-tenth," therefore, of cases not settled without further litigation is not only a small fraction, but a small integer.

Then as to the chief aim and object of the author's suggestions, namely (as I take it) "*to leave no room or pretext for a future regular suit*" (page 8, line 17). This, I think, must fail under any principle hitherto recognised by the courts. And indeed the author of the pamphlet has himself seen this; for he provides (page 19) that while a sale once confirmed shall never be challenged, "*nothing herein contained shall debar the tenure-holder from obtaining equitable relief or damages against his landlord, on proof of fraud, in a civil suit, or against any other person party to such fraud.*" Now the only equitable relief applicable to such a case is the recovery of the "permanent tenure" fraudulently filched; so the sale under the circumstances put must be set aside, or our ancient equity must be suspended in favour of

fraudulent landlords of permanent tenures. Suppose this matter were put as a substantive provision instead of as an "exception"—the mode adopted by the author of the pamphlet—it would run thus:—"If the lessor of a permanent tenure can, by following the procedure hereinbefore laid down, manage by fraud on his part alone, or with the aid of accomplices, to bring any sale of an under-tenure to completion by the said sale being confirmed, the defrauded lessee of the said under-tenure shall, under no circumstances, recover the property out of which he has been cheated; but he may get, by civil suit, equitable relief or damages from the fraudulent lessor, or his accomplices or both."

This crude but correct form of the proposal of the pamphlet is, I submit, sufficient for the condemnation of the scheme as propounded, and I shall not trouble to criticise details.

I come now to the second part of the pamphlet. Two objections here stare us in the face, bearing on matters of principle; so that again I need not go into details.

The first is that the scheme is limited to one exceptional case, while a general law should apply to general cases. The exceptional case provided for is, when we have got a decree between A and B not more than ten years old (page 29, line 9), in which the "amount of annual rent and instalments" (page 28, line 12) have been determined. The second objection is that the procedure suggested, when we have got such a decree, is so similar to that already practically in vogue, as to be without advantage; while it has the unquestionable disadvantage of jumping at the conclusion that there is, and can be, no defence to the second or other subsequent suit—a conclusion which must be resiled from if the defendant appear. The court is also committed by this procedure to a false position if it proceeds to execute (page 29, line 26) before it knows whether or not a defence will be made. The procedure violates the universal maxim, which recommends *audi alteram partem before* taking adverse action against it.

Present procedure requires summons to issue on representation of plaint; if defence be raised, the matter is tried; if, as in 999 out of 1,000 such cases as the author would provide for, no defence is made, *ex parte* decree is obtained and execution issues on the basis thereof. All this it simple, natural, rapid and fair to all sides. It is far more simple than that proposed, which is as follows:—Show your previous decree: say that such and such a fresh sum is due: get an execution proceeding on your so saying, which, however, shall not be executed unless the court specially direct. But it may so direct, and then the court has an attachment on its hands before it knows what is to become of the case. For after all, our "execution proceeding" (page 28, line 17) is only a summons to "*show cause why the amount claimed in the petition should not be levied*" (page 29, line 24). So we get back to our present procedure; for if the party appears, the matter has to be tried: if he does not appear, an *exparte* decree or 'order absolute' is made in favour of the petitioner.

I can see no advantage in disturbing the ordinary and well known practice of the courts by innovations such as those suggested, which are absolutely devoid of advantage to any one.

On two points of detail I must also comment—First, my experience is quite the reverse of that of the author of the pamphlet where he says that the question of payment of rent rarely is in issue (page 27-3). I have elsewhere said, and adhere to the opinion, that a very large part of our rent litigation would cease if unquestionable proof of payment were granted by the payees and were preserved by the payers as the only mode of proof admitted by the court in support of an allegation of payment. Secondly, paragraph 1, page 28, makes it incumbent on the courts "*in every suit for rent*" to "find and specify in its decree the annual rent of the tenure or holding and the instalments in which it is payable." But every lawyer knows that at the present time courts try all necessary issues; and will try those above prescribed whenever they are necessary to the decision of any case under trial. To enact that courts shall try them, whether thus necessary or not, is again to diverge from our recognised judicial policy and practice, and therefore the proposal cannot be approved.

The terms of the demi-official letter under reply do not seem to invite an opinion on the remarks which begin under the words "judicial procedure" on page 30 of the pamphlet. I therefore say little about them, especially as I have had another opportunity of fully stating my views on the draft Rent Bill. Generally, I hold that the right of numerous appeals in rent-suit matters should be curtailed; and I would object to making a new ground of appeal out of the fact that a "decree or order has decided a question of the amount of annual rent payable by the tenant, or of the instalments in which it is paid" (page 31); and I think that the powers of supervision given to the Judge by section 160 of the draft Bill likely to be most salutary.

It is simply impossible to make "*all rent-suits*," &c., "cognizable by the court of the Subordinate Judge" as a court of first instance, unless such a revision is made among Subordinate Judges, District Judges and High Court Judges as would cost lakhs of rupees for every little benefit. For one Subordinate Judge could not hear an appeal from another Subordinate Judge; all cases up to Rs. 5,000 would fall on that already far more than overburdened labourer, the District Judge, to be disposed of on appeal. The work of the High Court would also naturally be increased by bringing the first court of original instance one degree nearer to it. The proposal, I think, is not likely to be entertained; so I merely further remark on it that, as a rule, litigants do not look for courts in which they have confidence. Many litigants would prefer to have courts in which "confidence" ought not to be placed, as might be shown from some passages of the pamphlet under consideration.

Payment by instalments (page 34) should always be allowed in the discretion of the courts.

I think local enquiries under the direction of the executive more likely to yield true results, and to be free from corrupt influence, than similar enquiries held even by an improved class of amins.

I need say nothing regarding "sales for arrears under decree," as the procedure advocated by me has been freely set forth in the draft "procedure" part of my general report on the proposed new legislation; and I adhere to what I have there expressed at length.

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No. 1116, dated Furreedpore, the 13th November, 1884.

From—H. BEVERIDGE, Esq. District Judge, Furreedpore,

To—The Secretary to the Government of Bengal, Revenue Department.

I have the honour to submit the report called for by your letter No. 2428R of 23rd October last.

2. In my opinion the views and proposals of Baboo Mohini Mohun Ray for altering the procedure of the Bengal Tenancy Bill are not of much value and ought not to be adopted. They appear to me to be the suggestions of a man who has practical ability, but who is not capable of taking a comprehensive view of a subject. He also labours under the difficulty of writing in a language with which he is imperfectly familiar. The Baboo begins his remarks by saying that it does not pay to sue raiyats, and he says that there is not much execution decrees in such cases. Then he adds the observation that in a great many of such cases the raiyats make peace with their landlords after judgment and amicably pay rents. But it is clear that, if this statement is correct, a large proportion of suits are successful. The suits compel the raiyats to settle, and thus, the landlord gains the object for which he went into court. The writer seems to have forgotten the large proportion of cases amicably settled, when he remarked lower down that, if there were no ulterior objects to serve, a landlord would find it cheaper to forego his rents. He goes on to say that it pays to sue tenure-holders. Now if this is so, it seems to me that his whole case falls. If such suits pay, to use his words, that is, if such suits are successful, then the law must be working well, and there can be no need for altering it. The writer goes on to make two statements, both of which are opposed to my experience. The first is that the amount of the decree is rarely paid up till the issue of the sale proclamation; and the other is that, under ordinary conditions, the number of suits against tenure-holders is quite equal to that of suits against raiyats. My experience is that suits against tenure holders form a very small part of our rent cases, and that in many of them the rent is paid as soon as decree has been passed. I believe that many talukdars and other tenure-holders do not pay their rents because they like to put their zemindar to trouble; others don't pay out of a foolish feeling of pride; they think it beneath them to have dealings with their superior landlord or to acknowledge him in any way. They therefore wait till they are sued, and then pay as soon as process is taken out. They get an unimpeachable receipt in this way, and they do not greatly regard the extra cost of paying in such a manner. The bad feeling which prevents a tenure-holder from paying his rent is specially common among shareholders. The co-partners in a zemindari generally hold tenures in each others share, and being commonly on bad terms with one another, they wont pay until they are compelled. No legislation will put an end to suits which are the result of the perversity of debtors; they will go on as long as human nature is what it is.

3. The remedy proposed by Baboo Mohini Mohan is to have tenures registered. His scheme is given at page 21 of his pamphlet. Registration is to be optional, and application may be made by the landlord or by the tenure-holder. I can understand why the landlord should wish to register, but I do not see what the tenure-holder will gain by doing so, and I should think that he would be very unwilling to make his tenure subject to a new and very stringent sale law. It seems therefore that the only applications will be by the landlord. The writer further anticipates that by registrations being left optional there will not be many contentious cases. If this anticipation be realised, then there will not be registration in the cases in which it would be most useful. If there is only to be registration in friendly cases, the scheme will not be of much use. When there is contention, the investigation will often be long and troublesome, and will take up a great deal of the Subordinate Judge's time.

4. I do not see any advantage in making all suits against tenure-holders triable in the Subordinate Judge's Court. There are no Subordinate Judges at sub-divisions, and the parties will be put to needless trouble and expense by having to come into the sudder station. Many tenure-holders are poor, and the annual rents are often small; neither is there anything specially difficult about the rents of tenures. The proposal therefore will be unpopular, and will be expensive to Government from its unnecessarily taking up the time of their superior officers.

5. I do not see that registration will be effectual to prevent litigation. The mere fact of registration will be no guarantee of the truth of claim, and it would be monstrous to allow it to be followed by a summary procedure of sale. I must repeat that the proposed legislation seems useless, for the writer admits that the present law works fairly well. I beg to add

that, to use a phrase of Mr. Gladstone in speaking of the Franchise Bill, the Tenancy Bill has already as much weight as it can carry, and that, even granting that Baboo Mohini Mohan's scheme is a good one in itself, it would be wise to let it alone for the present. The thing to be done is to carry through a Bill which will relieve the tension now existing between landlords and raiyats, and to let alone everything not necessary for this purpose. Holding the view that it is inexpedient to complicate the rent question by adding provisions about the registration of tenures, it is perhaps not necessary for me to examine minutely the details of the learned pleader's proposal. I shall therefore only offer a few remarks. The procedure for sale is given at page 13. The draft speaks of months, and it is evident that the Baboo is thinking of Bengali months; but unless some express provision is made in the proposed Act, the courts would, I believe, certainly construe the word to mean months according to the British Calendar. They have already done so under the present Rent Act. I do not suppose that the Bengali months and sale days would suit in Behar and Orissa. The tenure-holder is to be allowed to contest the demand; but the sale is not to be stopped on that account unless the amount of the demand is deposited This provision is fully as objectionable and harsh as the proposal disapproved by the High Court, that no appeal by a raiyat be allowed unless the amount of the decree be deposited.

6. In section 11 it is proposed that the tenure-holder should not be allowed to bid at the sale. This seems to me to be unfair. If the tenure-holder is not to be allowed to contest the demand unless he pays up the arrear, he should at least be permitted to do all else that he can to save his property, and one of these means is to bid and buy in the tenure. Section 13 proposes to do away with the question of notice, but however unsatisfactory questions of the service of notice are sometimes, it would still be most dangerous and unfair to enact that a judgment-debtor should not be allowed to allege want of notice. At page 22 there is a note saying that pergunnah divisions are the best known divisions. This is not correct; and moreover the author has apparently forgotten that such divisions do not agree with judicial divisions, and that consequently it will often happen that the Subordinate Judge's jurisdiction for ordinary purposes will differ from that for the work of registration.

7. I now come to Part II of the pamphlet. Here the writer is on firmer ground, and his remarks are more valuable; still it strikes one that he does not know so much about petty rent-suits. One of his first observations is that the question of payment is comparatively unimportant and is not difficult to try. No one would make a remark like this who had seen many petty rent-suits tried. Disputed receipts are of every day occurrence in Munsifs' Courts, and it is often extremely difficult to determine if they are genuine or forged. Questions about instalments are, according to my experience, of very inferior importance. Another strange remark is that the question of the court-fee is not of much importance in suits against raiyats. It may not be much to the zemindar, though I believe that they complain bitterly about it; but it certainly matters a good deal to the raiyat whon he is cast and has to pay the cost of the stamp in addition to the amount of the rent. It would seem, too, that Baboo Mohini Mohun really thinks the question of the stamp to be important, for his scheme is little more than the substitution of a petition for a stamped plaint. According to my experience, successive suits against the same raiyat for the rent of his holding are not very common. When a raiyat cannot pay, and a decree is obtained against him, he is often ejected, and then of course there are no more suits against him; but when such cases do occur, the process is generally summary. The landlord files a copy of the old decree, and a decree follows almost as a matter of course, and with very little taking of evidence I don't think any more summary procedure would be safe. I am not aware that the zemindars have asked for the remedy suggested in the pamphlet, and if they have not, it is pretty good evidence that it is not required. The writer's remarks about the latter part of section 168 seem correct, and I also agree with him in striking out sub-section (*e*). This is an alteration which has, I believe, been already decided on. I do not think that sub-section (*b*) should be struck out. I think that he is right in objecting to the employment of revenue officers in local enquiries, but I would allow the courts to employ pleaders and other competent persons, and not restrict them to employing Civil Court ameens.

8. The remainder of the pamphlet does not, I think, call for much notice. It consists of a proposal to extend the writer's scheme for the sale of permanent tenures to all sales of holdings, and of suggestions, for doing away with the provisions for protecting registered and notified incumbrances, as an essential part of the special procedure is the registration of the tenures in the court of the Subordinate Judge. I do not see how it is to be applied to unregistered tenures, nor does the writer explain this. He thinks that quarterly sales will be better than monthly ones. I do not think that landlords would agree with him about this, and there would be this evil, that the sales would go on for about a fortnight. All the sales of the courts at a station are conducted by one man, for the old system of having a nazir for each court has been done away with. A monthly sale now lasts at many stations for three or four days, and even longer. If they be made quarterly, the nazir will have three times more property to sell, and will take a correspondingly longer time to get through the work. The result will be that all his other work will fall into confusion. Pages 36 to 42 of the pamphlet are mostly taken up with quotations from the Bill. If the

sections had only been referred to, and not quoted at length, there would have been a considerable saving of space. The writer objects to the protection of registered and notified incumbrances, but I think he does so without good reason. The proposals in the Bill seem to have been carefully considered and to be perfectly fair and workable.

9. When this report had been partly written, I received your letter No. 1664—910 and I proceed to reply to it. For the reasons given above, I think that the procedure proposed would be unfair to the defendant, and I also doubt if it would materially shorten litigation.

10. As regards my making any suggestion of my own for the simplification of procedure, I must plead my incompetence to add any thing of importance to the rules laid down in the Bill. The great difficulty is about the proof of the service of summons. The Bill proposes apparently to remove this difficulty by allowing the courts to substitute a registered letter for the summons. This will no doubt remove all difficulty if proof that the latter was posted and registered be accepted as proof of service. But the courts are not directed to accept such evidence as sufficient, and I doubt if they would do so of their own motion. It would not be safe to do so. Few raiyats can read and write, and those who could, would in all probability refuse to accept the letter, or to give a receipt for it. The difficulty of serving processes, and of proving the service, is specially felt when the defendant lives out of the jurisdiction. If he lives in another district, or even in another munsifi, the process is served through another court, and the plaintiff has to send his man to point the defendant out. If this man does not appear, or even if he is a little late in coming, the process is returned without any attempt being made to serve it. This is a great hardship, and at least the plaintiff ought to get his process fee back, or be allowed a fresh process without payment. The piada not having gone into the mofussil, there has been no expense to Government, and consequently the fee, or at least a part of it, should be returned. But I do not see why the courts should not try to serve the summons even in the absence of the plaintiff's man. In many cases the defendant is a well-known man, and the piada could find him out with the greatest ease. A postman does not refuse to deliver a letter because no one is present on behalf of the writer to point out the addressee. Piadas, if kept at one court, get to know the people of the neighbourhood just as postmen do, and advantage should be taken of their local knowledge. If an Uriya bearer in the service of a member of a Council, or some other well-known Calcutta resident, owes two rupees of rent, it seems absurd that his landlord down in Orissa must send a man all the way from there to identify him, under penalty of having the summons returned unserved. If, however, it be said that we must have general rules, and that we cannot meet special cases of hardship, then I beg to suggest that the despatch of a registered letter be declared *primâ facie* evidence of the service of summons and other processes when the defendant lives out of the jurisdiction, or more than 50 miles from the court. I think that some such concession as this could be made *ex necessitate rei*; but at the same time I would allow the defendant to re-open all such cases on his depositing the amount of the rent and costs. I do not think this would be unfair to the defendant, for by sending a registered letter the plaintiff has shown a *bonâ fide* intention of serving the process. I would also enact that in all cases where a defendant was found to have received the process, and to have falsely denied having received it, he should pay 25 per cent. to plaintiff in addition to the amount of the decree and the interest thereon. I may point out that the substitution of registered letters for processes served by piadas will in many districts be a saving to Government. The High Court has ordered that the boat hire of process-servers is to be paid by the courts, and it has been found in this district that the 25 per cent. added to the cost of the processes is very far from recouping Government for the cost of the boat hire. But, of course, in order to get the full benefit of the saving, it would be necessary to substitute registered letters wherever service could only be made by boat. I am inclined to think that it would be well to pass such an order. It seems absurd to employ 50 boats and two or 300 men to serve the processes of a court for a month, when 2 or 3 dâk-boats would do the work as effectually. It might be occasionally useful to serve summons by telegram, and I would therefore add to clause *d* the provision that a telegram may, if the court directs, be substituted for any other mode of service. Of course, if the above suggestion is good for rent-suits, it should be equally so for other classes of suits. Munsifs often complain of the difficulty in disposing with despatch of Small Cause Court suits owing to the delays in serving processes out of the jurisdiction. The only other alteration which I would propose to make in the Bill is the removal of section 219. I do not see any good reason why a minor landlord should not have the benefit of section 7 of the Limitation Act. He has it, I believe, under the present law. With reference also to schedule 4, Part III of the Bill, I beg leave to call attention to the decision in Mamtazul Huq's case, I. L. R. 9 Cal. 711. The effect of this decision is to override the provisions of section 210 of the Civil Procedure Code about payment by instalments. The section is a very useful one to debtors, and the decision I have referred to will compel landlords to be harder to their tenants than they would be if the special limitation law were less rigorous. It is not an uncommon practice in zemindary management to evade the three years' limitation by taking bonds from their tenants for the rent due by them when the time for suing for rent has nearly expired. There can be no doubt that the stringency of our limitation law is answerable for a good deal of the litigation for which Bengalis are blamed.

11. In my humble opinion, the difficulty in collecting rents through the courts is not mainly caused by defects of procedure; it is the Court Fees' Act which is to blame, and there is also a great want of Munsifs. If sufficient courts are given, and the establishments are sufficient in number and are properly paid, rents can be collected with comparative ease and rapidity even under the present law.

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No. 1445, dated Ranchi, the 20th November, 1884.

From—G. E. PORTER, Esq., Judicial Commissioner of Chota Nagpore,

To—The Secretary to the Government of Bengal, Revenue Department.

I have the honour to acknowledge receipt of your letters marginally noted, forwarding copy of a pamphlet on the procedure sections of the Bengal Tenancy Bill by Baboo Mohini Mohun Roy, and asking for my opinion thereon.

No. 2427T—R, dated 23rd October 1884.
No. 1663—903LR, dated 4th November 1884.

2. I have read the pamphlet carefully, and am of opinion that the proposals made are well considered, and will do much to simplify the procedure in rent cases. I think the change proposed in section XIII, which is an important one, will tend to prevent litigation.

3. The only doubt I have is whether the Subordinate Judges' courts will be able to dispose of all the cases that may arise under the new Rent Law. Provisions should be made for the trial of such cases in Moonsifs' courts also.

4. With reference to the part II of the pamphlet, I am of opinion (*a*) that the procedure suggested would not operate unfairly towards the defendant in the suit, and (*b*) that it would materially shorten and cheapen litigation.

5. I have no modifications to suggest in the proposed procedure, except the one indicated in paragraph 3 of this letter. If Subordinate Judges are able to cope with the work, it would of course be better that the cases should be tried and decided by them; but this appears to me hardly possible, as in sub-divisions and outlying parts of districts there are no Subordinate Judges, and it would be hard on litigants to expect them to institute all their rent-suits at head-quarters.

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Dated Comillah, the 21st November, 1884.

From—BABU AUGHORE NATH GHOSE, 2nd Subordinate Judge, Tipperah,

To—The Secretary to the Government of Bengal, Revenue Department.

In obedience to your letter No. 2432T—R, dated the 23rd ultimo, and No. 1668—914LR, dated the 4th instant, I have the honour to report as follows.

2. Leaving aside the financial aspect of the question, and subject to the following amendments and objections, I approve of the "draft of an especial procedure for the sale of permanent tenures for arrears accruing thereupon," including "rules for the registration of tenures," made by Babu Mohini Mohun Roy.

(*a*) *Section IV of the draft.*—The following may be added to this section:—"The notices should be published by beat of drum, and a copy of the notice may, if the court so directs, be sent to the tenure-holder or (if there be more than one tenure-holder, to all or any of them by post in a letter registered under Part III of the Indian Post Office Act, 1866. And if the court so directs, the notice may be published in some official Gazette or local or other newspaper."

(*b*) *Section XIV of the draft.*—To the three exceptions specified in this section, the following may be added:—

(*d*)—Any under-tenure existing from the time of the permanent settlement.

(*e*)—Any under-tenure recognized by the settlement proceedings of any current temporary settlement as a tenure, at a rent fixed for the period of that settlement.

(*f*)—Any lease of land whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship, or burning or burying grounds have been made.

(*c*) *Section XVI of the draft.*—The draft makes no provision for the disposal of the sale proceeds in ordinary cases. Section 186 of the Bill may, with necessary modifications, be made applicable to the disposal of such proceeds.

(*d*) *Sections XIX and XXII of the draft.*—I agree with Babu Mohini Mohun Roy in observing that "the registration of leases and counterparts is not absolutely necessary for the purpose of registering tenures." And I am of opinion that the provisions for the registration of leases and counterpart leases should be omitted. The registration of leases and counterpart leases is likely to add greatly to the work of the Subordinate Judge, to the detriment of other and more important work with which he is entrusted.

## PART II.

8. I cannot approve of the suggestion that when in a civil suit a decree has been made for the rent of a holding or tenure, and the amount of annual rent and instalments determined, the tenant may be proceeded against by application, as in an execution proceeding for subsequent rents accruing upon the same tenure.

Addition and subtraction of lands, increase and decrease of the rental, transfers of holdings or tenures by operation of law or act of parties, are likely to make the plan suggested of not much practical utility. When the question of the amount of rental or of instalment is a *res judicata*, the suit, I believe, does not prove very troublesome to the court or expensive to the suitors. I think it is not necessary to lay down any special or extraordinary procedure for such suits. The decrease in most of such cases may be executed at once on the oral application of the decree-holder under section 256 of the Civil Procedure Code. The introduction of this section into the Bill, with a little addition, will enable holders of rent decrees to have their decrees executed without any delay. And as most of these decrees will be final under section 168 of the Bill, no inconvenience will, in the majority of such cases, arise in taking out immediate execution.

## CHAPTER XIV OF THE REVISED BILL.

4. *Section 160 of the Bill.*—I cannot agree with Baboo Mohini Mohun Roy in suggesting that "all rent-suits and applications under the Rent Act" may be made cognizable by the court of the Subordinate Judge. I believe there are many districts in which there are villages more than 50 or 40 miles distant from the Subordinate Judge's court. It would be very hard on suitors, especially poor suitors, to be compelled to carry on original suits at any season at a place so far off from their homes and the homes of their witnesses, although it may not be so very difficult for a zemindar or the holder of a permanent tenure to carry on litigation connected with the registration or sale of such a tenure at such a distance.

5. *Section 168 of the Bill.*—I agree with Baboo Mohini Mohun Roy in suggesting that the following clause may be added to the exceptions to the rule contained in this section, so far as relates to the courts of original jurisdiction:—"Or unless the decree or order has decided a question of the amount of annual rent payable by the tenant, or of the instalment in which it is payable." I may quote here what I stated in my last report regarding this section. It is as follows:—This section may be retained with the addition of the following to paragraph IV:—

or a question of the amount of rental payable by the tenant. Sometimes the question of the amount of rental payable by a tenant is as important as a question of a right to enhance or vary the rent. It may not be necessary to retain the proposed addition after the expiry of four or five years after the passing of the Bill, and the consequent operation of the sections regarding receipts (sections 70 and 71); but until that time the proposed addition is urgently required." For the reason stated in the preceding paragraph, and having regard to the other important duties of the Subordinate Judge, it would not be desirable to make him try small rent-suits. This section may be so framed as to make his judgment, passed on appeal, final, when the amount claimed in the original suit does not exceed Rs. 100, notwithstanding that his judgment "has decided a question of the amount of annual rent payable by the tenant, or of the instalments in which it is payable;" but it should not be made final if it has decided a question relating to title to land or some interest in land as between parties having conflicting claims thereto, or a question of a right to enhance or vary the rent of a tenant. The adoption of the proposal to make the judgment of the Subordinate Judge final in all cases of the value of Rs. 100 and under, excepting those referred to in paragraph 4 of section 168 would be simply extending the authority which the District Judge already has under the existing law [section 102 of Act VIII (B. C.) of 1869] to the Subordinate Judge.

6. *Section 163 of the Bill.*—I agree with Babu Mohini Mohun Roy in submitting that sub-sections (*b*) and (*c*) of this section are objectionable. I beg to quote here what I stated in my last report regarding this section:—"It would be better to give the defendant the option of putting in a written statement. It would not always be easy for a Moonsif in a heavy chowki to take down with due care the abstract of the defence on the first day fixed for the hearing of the case, when the case has to be postponed. As a rule, the defence in a rent-suit is more complicated than the defence in money suits triable summarily by the Small Cause Court.

"I beg to object to the application of section 189 of the Code of Civil Procedure to appealable rent-suits. It would be very difficult for a court of appeal, having to deal with facts, to come to a correct conclusion as to the merits of the case without having the entire evidence before it."

7. *Section 166 of the Bill.*—I do not agree with Babu Mohini Mohun Roy in saying that the principle of payment by instalments is inapplicable to rent decrees. It is true that "there is only accumulation of interest on other decrees for payment of money," and in the majority of cases of rent decrees the debt accumulates with interest and subsequent instalments of rent.

But it must be borne in mind that the raiyat's income depends on the produce of his land, and he has his bad year or consecutive bad years to meet. This section is a supplement to sections 164 and 165. I object to those sections themselves for the reasons stated in my last report (Extra Supplement to the *Calcutta Gazette*, October 15th, 1884, page 488), and I am humbly of opinion that the provisions of section 210 of the Civil Procedure Code should be made applicable to rent-suits.

8. *Section 174 of the Bill.*—I agree with Babu Mohini Mohun Roy in suggesting that the local enquiry contemplated by clause 2 of the section may be directed to be made by a Civil Court amin.

9. *Chapter XV of the Bill.*—I do not agree with Babu Mohini Mohun Roy in making the special procedure proposed in his draft for the summary sale of under-tenures applicable to sales for arrears under decrees. The adoption of the special procedure with regard to patni taluks and other permanent tenures is very likely to materially diminish the number of sales of such tenures for arrears under decrees. The procedure for sale for arrears under decrees will be chiefly concerned with the ryoti or occupancy holdings. It is said that there will be a greater concourse of people interested in land on quarterly sale days, and larger competition and greater publicity than on sale days spread over 12 months in the year. But I beg to submit that candidates for the purchase of ryoti holdings are generally people of the village where the ryoti is situated, or of villages adjacent. Such candidates come to bid for a particular holding or holdings lying near their homes. The presence of such people is not likely materially to be affected by the decrease of the number of sale days in the year. In the result I am not prepared to say that the advantages to be derived from the presence of a greater number of people on quarterly sale days are likely to compensate for the disadvantage to be undergone by the landlord in the shape of delay in recovering his money, and by the raiyat in that of accrual of interest on his debt.

10. In cases of small ryoti holdings it is sometimes more desirable to have the sale held at the spot than within the court premises.

11. I think it is better to authorize the High Court to make rules for the guidance of the courts in the exercise of their duties with regard to sale for arrears under decrees than to lay down in the Act any inflexible rules regarding the time and place of sales. The enactment of a section similar to paragraph 2 of section 287 of the Civil Procedure Code, enabling the Hon'ble Court to make different rules for different courts, according to local circumstances, is likely to prove beneficial to both the landlords and the tenants.

12. As the holding is hypothecated for rent (section 77 of the revised Bill), it is not necessary to make it compulsory on the part of the landlord to attach the holding. Delay may be avoided by expressly authorizing courts to issue the proclamation of sale in the first instance.

13. I agree with Babu Mohini Mohun Roy in making the provisions of sections X, XIII, XVI, and XVII of his draft applicable to sales for arrears under decrees.

14. I am also of opinion that the sections regarding registered and notified incumbrances may safely be eliminated from the present Bill.

15. In conclusion, I beg to state that the proposal made by Baboo Mohini Mohun Roy for the trial of all rent-suits by Subordinate Judges would, as indicated above, operate unfairly towards defendants in the suit. Besides, his suggestion to allow appeals in cases in which the question of title, &c., or of the amount of the rental, &c., is involved, from the Subordinate Judge's decision, would enormously add to the appellate work of the District Judge, who, on the other hand, would be deprived of a great portion of the assistance he now gets from the Subordinate Judge in consequence of that officer's time being occupied in the disposal of all original rent-suits. Furthermore, the engaging of pleaders in the Subordinate Judge's court in small rent suits would be more expensive and thus the plan proposed, far from cheapening litigation, would make it more costly. I am of opinion that the plan proposed of enabling landlords to apply for the recovery of arrears of rent under the rules for the execution of rent decrees, and of leaving the decision of objections to the execution department, is not likely to materially simplify matters, while it is likely to operate unfairly towards the tenant.

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No. 481, dated Chupra, 21st November, 1884.

From—H. W. GORDON, Esq., District Judge of Sarun,

To—The Secretary to the Government of Bengal, Revenue Department.

With reference to your letter No. 2425T—R, dated the 23rd October 1884, and subsequent letter of the 4th instant, requesting me to submit an expression of my opinion on the views and proposals set forth in a pamphlet by Baboo Mohini Mohun Rai on the procedure sections of the Bengal Tenancy Bill, I have the honour to observe as follows:—

## PART I.

2. The procedure proposed by the author in this part applies not to all tenures as defined in the revised Bill, but to permanent tenures only, such as *patnis* and the like, which largely

exist in the district of Bengal Proper. In Behar, I believe, permanent tenures, such as *mukarrari* tenures and the like, are not very numerous, and where they exist they are generally created by deeds, or are recorded in settlement proceedings in which the annual rental and instalments in which the rent is payable are clearly specified. The result is that disputes regarding these matters are exceedingly rare, and sales therefore of such tenures for arrears of rent seldom take place in this part of the country. Accordingly, the special procedure suggested in the pamphlet, even if it be accepted and adopted, would not materially affect Behar, or contribute to any appreciable extent towards the reduction of litigation.

3. Generally speaking, I cannot concur in the writer's proposals. I object to the civil court being made, so to speak, a court of registration, and so vested with executive functions. Further, these registration proceedings will, I believe, be mostly contentious. Disputes between the parties will have to be determined as in a regular suit, and after registration come the so-called execution proceedings in which the issue of payment will have to be tried and determined as between *zamindar* and tenure-holder. After sale other complications will arise, inasmuch as any person having an interest in the tenure voidable on sale may apply for compensation out of the surplus proceeds of sale, and all questions relating to the distribution of these proceeds will have to be dealt with and determined by the court. The procedure, instead of being simplified, will thus become cumbrous and complicated, and more time will probably be taken up in disposing of such questions than in the trial of separate suits. Instead, therefore, of reducing and simplifying litigation, the proposed procedure is, I fear, calculated to augment and protract it, as well as to increase expense. It is, I consider, a mistake to attempt to assimilate the special procedure of Regulation VIII of 1819 to the trial of ordinary rent suits. The *patnidar* is often a more wealthy and influential man than the *zamindar* himself, and there is little analogy between a *patnidar* and an ordinary raiyat. The summary procedure of Regulation VIII of 1819, which is embodied in Chapter XVI of the revised Bill, has, the author allows, hitherto worked very successfully, and no sufficient reason has, I submit, been made out for changing it. Indeed, in the interests of the *zamindars*, it ought, I think, to be retained.

## PART II.

4. I am equally opposed to the procedure proposed in this part. That it will simplify matters and diminish litigation to any great extent I very much doubt. The court will merely have to enquire into and determine issues in the Execution Department, which would otherwise be disposed of in a regular civil suit. The question of payment of rent is not so unimportant a matter in a rent suit as the author thinks. In Behar especially, where printed receipts are at present rarely used, the controversy as to payment is in fact between the *patwari* on the one side, and the raiyat on the other, and it is no easy task to determine which of the two is speaking the truth. Such a matter ought not to be determined in the Execution Department. Further, other questions might arise between the parties, *e. g.*, the raiyat might deny the landlord's title, alleging that the land had changed hands, subsequent to the passing of the decree (the *onus* would of course lie on the raiyat under section 109 of the Evidence Act to prove this), and this is a question which ought to be determined in the ordinary way in a civil suit, and not in the Execution Department. Such a procedure would be opposed to the whole theory on which the trial of civil suits proceeds. Again, a decree obtained by a landlord against a raiyat, in which the annual rental (disputes as to instalments are rarely or never raised in rent suits in Behar) cannot in all fairness to the raiyat be treated as *res judicata* in subsequent proceedings between the same parties; yet this is what the writer's procedure would amount to. Such a decree would no doubt be *primâ facie* evidence against the raiyat in a subsequent suit, but he might allege, and with truth, that for some cause or other there had been a decrease in his rent since that decree was passed against him, and this matter, if tried at all, would, under the proposed procedure, have to be tried in the Execution Department in the same way as in a regular suit. Altogether, therefore, I am of opinion that the ordinary procedure by suit should be adhered to, otherwise the raiyats may be placed at a great disadvantage in defending their rights in an execution proceeding. There might perhaps be a saving of expense in the matter of court fees on plaints (these the writer thinks are small), but this would not compensate for the injustice that might be done to the raiyats in many instances; and even allowing that the author's proposed procedure might slightly cheapen litigation so far as the parties are concerned, it is very doubtful whether it would shorten it.

5. As regards the writer's criticisms of certain sections of the revised Bill, I think section 168 should be left intact. It is desirable that the District Judge should be vested with revisional powers in suits in which there is no appeal. If it be objected that the applicant can subsequently move the High Court, this difficulty might be met by adding to section 168—"such order shall be final." I am opposed to adding anything to the 4th paragraph of section 168. Disputes about instalments are rarely raised, and if appeals are allowed in all cases in which a question of the amount of annual rent payable by the tenant has been determined, then paragraphs (*a* and *b*) will be of no effect in checking appeals, as this is a question that is raised in most rent suits. I do not think sub-section (*e*) of section 163 should be struck out. If it be, then written statements might be filed in cases in which they

were not at all necessary. The court might be allowed to exercise its discretion in calling for a written defence, as suggested in paragraph 35 of my letter No. 320, dated 30th July 1884. Boundaries should, I think, be stated in the plaint as required by section 167. It will be to the advantage of both parties that this matter be decided between them once for all I agree with the author that payment by instalments is not applicable to rent decrees. I also think the local enquiry referred to in paragraph (2) of section 174 might be better made by a Civil Court Amin.

6. The writer's comments on Chapter XV of the revised Bill do not appear to call for special remark. The procedure he sugests will not, I think, simplify matters much. Quarterly nstead of monthly sales will not be of much advantage to the parties concerned.

7. I object to the writer's proposal to vest Subordinate Judges with exclusive jurisdiction in rent suits. The only point in its favour seems to be that it will prevent disputes as to jurisdiction. But such questions will not be often raised, and they can easily be decided as in title suits by the court in which the plaint is filed. To entrust exclusive jurisdiction to Subordinate Judges will be to cause needless expense to the State and a great waste of judicial strength. The courts of Subordinate Judges are also courts of appeal, and competent officers can decide four or five appeals in the same time as they would take to try two or three rent suits. Further, at outlying Munsifees there are no Subordinate Judges. To carry out the author's scheme Subordinate Judges would either have to be posted to these stations at an additional cost to the State, or else suitors will have to come long distances into head-quarters to file their plaints, thereby entailing great hardship and expense on the parties concerned, as well as on the witnesses who may be cited on either side. Munsifs of approved experience and judicial ability are now appointed to each district to try rent suits exclusively. This scheme, I believe, works well and should be retained.

8. My views in regard to the cheapening and shortening of litigation are in accord with those enunciated by the Hon'ble Judges of the High Court in Mr. Bayley's letter No. 1986, dated August 1884, to the Secretary to the Government of India. To avoid delay, it is desirable to increase the judicial staff whenever an accumulation of arrears occurs, and to cheapen litigation the court fees might be reduced to what they were before the transfer of rent suits from the Revenue to the Civil Courts. The annual revenue derived from court fees is greatly in excess of expenditure, so that the State might well spare some of it to achieve the desired objects.

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Dated Serajgunge, the 22nd November, 1884.

From—Baboo Kailas Chandra Mojumdar, Moonsif of Serajgunge,

To—The Secretary to the Government of Bengal, Revenue Department.

With reference to your letter No. 2433T—R, dated the 23rd October last, forwarding, for an expression of my opinion, a pamphlet by Baboo Mohini Mohan Roy on the procedure section of the Bengal Tenancy Bill, I have the honour to submit as follows.

Part I of the pamphlet.

A mere summary procedure is really defective. Such a procedure is, as the writer says, often the prelude to lengthy litigation. The proposal to transfer the sales of permanent tenures to civil courts is therefore a move in the right direction. This will avoid summary sales being followed by regular civil suits, and it will be to the beneficial interest of landlords and tenants, if the questions which arise between them should once for all be tried by the civil courts.

The suggestion to entrust the work of registration of tenures to the civil court is also, in my humble opinion, a good suggestion.

Registration of the lands of a proprietor under Bengal Act VII of 1876 is no evidence at all upon the question of title of a proprietor so registered, and does not relieve a proprietor from the burden of proving his title in a regular civil suit; but it would not have been so if this were once for all done by the civil courts.

The registration of tenures by the civil courts will thus be a boon to tenure-holders, and if the disputes are settled once for all, it will relieve the tenure-holders of a great amount of trouble and expense.

To make the law complete in itself, these works should be transferred to the civil courts, and the division of jurisdiction between civil and revenue courts should, as far as possible, be done away with. The spirit of the proposals is therefore good, but the way in which the writer proposes to carry out the proposals is, in my opinion, objectionable.

The writer proposes to have these works done by the courts of the Subordinate Judge alone; but this will put poor tenure-holders, who live at a distance from the head-quarters of a district, to a very great disadvantage. The benefit of the law will, I fear not be availd of by these, and then the law I think will have practically no effect.

The difficulty which proprietors undergo in getting their lands registered under the Land Registration Act will be greater in the case of ordinary tenure-holders if they are put to the same trouble and expense in going to the Sudder and getting their tenures registered there.

The intention of the writer may, I think, be fairly carried out without any expensive machinery, if officers taken from the higher grades of Moonsifs are specially appointed for the purpose at every sub-division.

It will be convenient if the suggestion is modified in the above way.

The registration of tenures has been prosided for to bring tenures under the provisions of the "special procedure for the sale of permanent tenures;" but to give landlords the benefit of section 122 of the Bill, the rules for the registration of tenures might with advantage be extended to ryoti holdings also.

A registration law well devided on the lines of the Land Registration Act would be the greatest possible blessing to the agricultural community, and I think that the registration of ryoti holdings should form a part of the suggestion made for the registration of tenures.

The other changes proposed call for no remarks.

Part II. With reference to this part, I have been called on to submit my opinion on two points—

(1). Whether the simplified procedure suggested for the trial of rent suits would operate unfairly towards the defendants in the suits; and (ii) whether it would shorten and cheapen litigation.

In my humble opinion the procedure suggested would operate unfairly towards the defendants, and that in this way.

In a simple suit for rent, the questions usually raised are not only the three mentioned by the writer, but there are others more intricate and important as mentioned in the ruling reported in I. L. R. 8 Calc. 288.

Even when in a civil suit a decree has been made for the rent of a holding or tenure, the defendants in subsequent suits are, under the law of evidence, not estopped from raising other questions, such as that the plaintiff's title has expired or has been defeated by a title paramount; that the defendant has been evicted by the plaintiff; that his occupation has been determined by relinquishment, and so forth.

If after a decree is obtained the landlord's title passes in to the hands of third parties, and a suit for rent for subsequent years is brought by a plaintiff claiming by a derivative title, the defendant is not even stopped from shewing that the title is really not in the plaintiff, but in some other person—vide the ruling cited above.

Thus it will appear that even after a decree is obtained the defendant is entitled to raise many intricate questions not taken notice of by the writer, and it will be to the disadvantage of the defendant if these questions are tried in the execution stage.

Any question tried in execution proceedings is usually tried hastily and perfunctorily. To have intricate questions tried in execution proceedings will therefore surely operate unfairly towards the defendants.

To abridge judicial enquiry in this way will not, in any opinion, be safe to the tenants.

The procedure suggested may have some application in cases in which the parties remain the same, and there is no dispute in other points; but the number of such cases is very few.

In a large number of cases, the simplified procedure will I fear lead to complication, and will be abused to the detriment of the interest of the defendants.

If the decrees are *ex parte* and unexecuted, which with designing landlords is generally the case, the suggestion is open to another objection, and that is, that these decrees cannot finally settle the question of rent. The defendants in such cases are entitled to dispute the rate of rent in subsequent suits— *vide* the ruling, I.L.R. 8 Calc. 275.

There is another suggestion of the writer which is most objectionable, and that is to make all suits and applications under the Rent Law triable by the court of the Subordinate Judge.

This may be good in a zamindar's point of view, but if the view be adopted, necessary litigation will also be avoided. Advantage will then be taken of the helplessness of the ryots, and the doors of justice will in a manner be practically closed to poor landlords and tenants.

The writer seems to have left out of consideration the condition of the people of the remote mofussil, and how cheaply the poor landlords and tenants get relief in the courts of Moonsifs.

The heavy expense which a party seeking to obtain relief in the court of Subordinate Judges is put to, in addition to other charges which he cannot count as "costs of the suit," will not only shorten litigation, which is necessary, but will I fear be an absolute bar to suitors getting relief in courts.

If the public are consulted they will agree with me in thinking that the writer is not right in saying that "it will be far more simple and far less costly to entrust the jurisdiction to Subordinate Judges, &c."

Taking the period of service the Moonsifs may be less experienced officers than the Subordinate Judges, but that they, as a class, do not possess general confidence, is an assertion which I cannot persuade myself to believe. There are many in the higher grades of Moonsifs who I think are equally competent to try rent cases with ability.

I should not say anything more on the subject, but this I cannot refrain from saying, that is, that the Moonsifs as a class cannot be said to be less efficient men.

In my humble opinion the execution procedure will present difficulty, and the defendants will not have a fair trial of their case if this procedure be adopted

The agricultural class will have a greater difficulty if all suits and applications under the Rent Law are tried by the court of the Subordinate Judge alone.

These suggestions of the writer are therefore unworkable.

The procedure which I beg to suggest is—

(i) That suits for rent up to Rs. 1,000 will be tried by officers taken from the higher grade of Moonsifs, and to be specially empowered by Government to exercise jurisdiction in these cases.

(ii) That one of the special officers appointed will be placed at every sub-division.

(iii) That the ordinary procedure will be observed in rent cases of greater value and in cases in which issues are to be framed, but that simple suits up to Rs. 50 will be tried under the Small Cause Court procedure.

If possible, some Judges may also be made itinerant Judges.

(Suits for the rent of bastu lands and of lands situated in a town are now tried under the Small Cause Court procedure. This provision therefore might with advantage be extended to other rent-suits of smaller values, in which intricate questions are not involved.)

As a part of this a reduction of the heavy institution fees may be suggested, which will have the effect of changing plaints into petitions as proposed by the writer.

As difficulty does generally arise, specially at the time of sale, if a proper identification of the land held by the tenant is not given in the plaint, I think that it will be to the good of the tenants if in plaints the landlord give the boundaries, or state something which may identify the land held by the defendant as a tenant.

In cases in which the defendant pleads that he has been evicted by the plaintiff, or that his occupation has been determined by relinquishment, the question of boundaries of the land held by the defendant forms a very important question for trial in the rent-suit.

The other changes proposed may be accepted.

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No. 34, dated Burdwan, the 22nd November, 1884.

From—Baboo Mohendro Nath Mitter, Subordinate Judge of Burdwan,

To—The Secretary to the Government of Bengal, Revenue Department.

With reference to your letters Nos. 2429T—R and 1665—911, dated the 23rd October and the 4th November, respectively, forwarding, for an expression of my opinion, a pamphlet by Baboo Mohini Mohan Roy on the procedure sections of the Bengal Tenancy Bill, I beg most respectfully to submit the following observations for the consideration of His Honour the Lieutenant-Governor.

2. Baboo Mohini Mohan Roy starts with the assumption that suits for rent against tenureholders form a large proportion of the rent litigation of the province, or at any rate, he believes that the aggregate amount of litigation in, and resulting from, this class of rent-suits is quite equal to the aggregate amount of litigation in, and resulting from, the class of suits for rent against ryots. This has led him to give undue prominence to his especial procedure for the sale of permanent tenures for arrears accruing thereupon, and one of his principal reasons for suggesting it seems to be that almost every Regulation VIII sale is followed by a harassing suit for setting aside the sale.

3. To show that Baboo Mohini Mohan is entirely wrong in his assumptions and statements, I have collected the following facts and figures from the sheristá of the Maharajah of Burdwan, who has a great deal more to do with patni tenures than any other zemindar in Bengal.

*Applications for the sale of Patni Tenures in the District of Burdwan made by the Maharajah of Burdwan in the years 1288, 1289, and 1290.*

| The years in which applications were made. | | Number of applications. | Number of sales. | Number of suits for setting aside sales. |
|---|---|---|---|---|
| 1288 | Applications for sale at the beginning of the year . . | 594 | 19 | 1 |
| | Ditto in the middle of the year . . | 815 | 17 | 1 |
| | TOTAL . | 1,409 | 36 | 2 |
| 1289 | Applications for sale at the beginning of the year . . | 660 | 9 | 1 |
| | Ditto in the middle of the year . . | 777 | 20 | 1 |
| | TOTAL . | 1,437 | 29 | 2 |
| 1290 | Applications for sale at the beginning of the year . . | 570 | 19 | 0 |
| | Ditto in the middle of the year . . | 810 | 27 | 2 |
| | TOTAL . | 1,380 | 46 | 2 |
| | GRAND TOTAL . | 4,226 | 111 | 6 |

The above statement clearly shows that Regulation VIII of 1819 has worked very satisfactorily, and that the percentage of suits for setting aside patni sales during the last three years is less than six. In my last report I have already stated that this law ought not to be incorporated into the Tenancy Bill. It ought to be left as it is, and that if any amendment is necessary, it is only in regard to the service of notice of sale. The uncertainty that hangs over this matter, and the controversy that usually takes place as to whether the persons attesting the service of a notice are substantial persons within the meaning of the law, may all be put an end to, if a separate sale notice paper be printed and published by Government twice a year for each district or Commissioner's division. The bulk of the existing Government Gazette will be periodically increased if these notices be inserted therein, and people interested in the notices only will feel it a grievance to subscribe to the Gazette for them. It would be desirable, therefore, that a separate sale notice paper should be issued by Government, and as many copies as may be subscribed for should be sent to each district or division by post. Four to eight annas annual subscription for a copy, besides the charges for the insertion of the notices, would re-imburse Government for all the expenses that may be incurred in the publication, and patnidars and other under-tenureholders, whose interest it will be to protect the superior tenure from sale, and intending purchasers, will be obliged to subscribe and will ungrudgingly subscribe, if it be enacted that the publication of notice in that paper shall be conclusive evidence of service. This is the only amendment that is required in the patni law in the interests of both the zemindar and his under-tenureholders.

4. There cannot be the slightest doubt that suits for rent against tenureholders form a very insignificant proportion of the rent litigation of the province. Such suits are mostly, owing to their value exceeding one thousand rupees, brought in the courts of the Subordinate Judges, and their number is very small compared to that of suits brought against ryots in the Munsifs' courts. I will take, for example, the district of Burdwan as its figures are at hand—

| Year. | Munsif's Courts. | | | Subordinate Judges' Courts. | | |
|---|---|---|---|---|---|---|
| | Instituted. | Disposed of— | | Instituted. | Disposed of— | |
| | | Contested. | *Ex parte.* | | Contested. | *Ex parte.* |
| 1881 . . . . | 6,106 | 1,446 | 4,597 | 44 | 9 | 32 |
| 1882 . . . . | 6,971 | 1,408 | 5,619 | 28 | 13 | 17 |
| 1883 . . . . | 6,639 | 1,354 | 5,644 | 44 | 15 | 29 |
| Total . | 19,716 | 4,208 | 15,860 | 116 | 37 | 78 |

It will be seen from the above table that Baboo Mohini Mohan's comparison between the two classes of suits is quite erroneous. He is also wrong in saying that ryots are seldom sued except when there is ill-feeling between them and their landlord. The large number of *ex parte* cases decided every year shows that ryots are sued even where there is no combination among them. They either neglect to pay their rents, or are, from various causes, unable to pay them.

5. The suggestions for simplifying the procedure for the trial of rent-suits made in part II of the pamphlet will practically prove ineffectual so far as the delay in the disposal of those suits and the harassment caused thereby are concerned. The writer simply objects to the proceeding that shall be held to hear and determine the ryots' objections on presentation of petition for recovery of arrears by the zemindar being called a suit. Such a procedure, moreover, would operate unfairly towards the ryot. It would be in the power of an unscrupulous landlord to oppress, harass, or ruin his tenant by not causing the notice to be served. The proposal for making all rent-suits and applications under the rent law cognizable by the court of the Subordinate Judge, set forth in page 32 of the pamphlet, cannot be seriously entertained. The present number of those Judges will have to be increased ten times to cope with the work, and the cost would be immense.

6. I am not prepared to recommend a novel and untried procedure for the sake of a change. It is far better that we should proceed on sure and tried ground. In my last report I have stated that the provisions embodied in sections 163, 165, and 168 of the revised Tenancy Bill will meet most of the requirements of both the landlords and their tenants. I would most respectfully invite attention to paragraphs 25, 27, and 28 of that report. There seems to be some difference of opinion in regard to the retention of clauses (*e*) and (*f*) in section 163 of the revised Bill. In my humble opinion if those clauses are struck out, the very essence of expedition would be destroyed.

7. The only other suggestion that I have to make for expediting the disposal of rent-suits is that the present judicial staff should be increased and their establishments strengthened.

No. 9, dated Barisaul, the 24th November, 1884.

From—Baboo Beni Madhub Mitter, Subordinate Judge of Backergunge,
To—The Officiating Secretary to the Government of Bengal, Revenue Department.

With reference to your predecessor's letter No. 2431T—R (Revenue Department), dated the 24th October 1884, and with reference to your letter No. 1667-913 L—R, dated the 4th November 1884, I have the honour to state most humbly that the special procedure for the realization of arrears of rent from the permanent tenure-holders, suggested by Baboo Mohini Mohun Roy in Part I of his pamphlet, appears to be objectionable, in my humble opinion, on account of the following reasons:—

(*a*).—In a district like Backergunge, where there are about 15 grades of permanent under-tenures, and where there are many under-tenures which lie under three or four different superior tenures or under tenures as the case may be, it will be a very difficult and tedious affair to prepare registers like those proposed in the pamphlet.

(*b*).—The procedure which is not equally applicable to all classes of tenants does not appear to be a fair one.

(*c*).—If the special procedure mentioned in Part I of the pamphlet be introduced then the zemindars would be able to realize the rent due to them from the permanent tenure-holders very easily, but those permanent tenure-holders who are to realise rent from under-tenants who hold ryoti holdings, or whose tenures are other than permanent tenures, would be thrown into a great hardship, for their tenures would be sold if they fail to pay their rent speedily to their superior landlords, but they would not be able to realize so soon the rent which they would get from their under-tenants. It may be said that the summary procedure for selling the patnis under Regulation VIII of 1819 has been in force for a long time, and the patnidars have never complained of any hardship resulting from that procedure. Then why should the other classes of tenure-holders complain of any hardship if the proposed procedure, which in certain respects would be better than that prescribed by Regulation VIII of 1819, be introduced? But the patni tenures cannot be compared with the other classes of tenures. The patni tenures are created by the zemindars solely for the purpose of collecting rents, and the zemindar at the time of granting the patni allows some profit to the patnidar out of his own profit.

The under-tenures which exist in this district were originally created for the purpose of clearing the jungles and of making the waste land culturable, and the tenure-holders had to devote their labour and capital for the purpose of making the jungle-covered lands culturable, that being so, the position of these tenure-holders should be better than that of the patnidars.

(*d*).—Under the special procedure, the tenure-holder would be obliged to deposit under section VIII the amount of the landlord's demand in order to stay the sale, although he might have already paid the greater part of that amount. It is not improbable that some unscrupulous landlord might apply for selling the tenures of their under-tenants, ignoring the receipt of the money paid by the tenure-holders.

(*e*).—The provision of section XIII would be very injurious to the tenure-holders, for if all sales be liable to be set aside indiscriminately, then very few bidders would come forward to bid, and consequently the tenures would be sold at a very low price.

2. The simplified procedure suggested for the trial of rent-suits appears, in my humble opinion, to be also objectionable because it would sometimes throw the defendants to a great hardship, for section III of part II proposes to give the courts power to issue process for sale of the defendant's tenure or for the attachment of the moveable and immoveable property belonging to him simultaneously with the issue of notice to the opposite party to show cause why the amount claimed should not be levied from him. It might happen that some unscrupulous landlord, in order to injure his tenant with whom he might be on bad terms, would sue for the rent which might have already been paid, and would throw obstacles in the way of his defending the suit by attaching his properties or by issuing a process of selling his under-tenure simultaneously with the issue of notice to the defendant. In some cases the tenure or the holding of the under-tenant would be sold even before he could be aware of it, if the notice be not served upon him properly.

3. If the latter part of section III of part II (which proposes to give power to the court to issue process for sale of the tenure of the defendant or for attachment of the moveable and immoveable properties of the defendant simultaneously with the issue of notice to the opposite party to show cause why the amount claimed should not be levied from him) be abandoned, then the proposed procedure might be introduced. It would materially cheapen litigation, and to a certain extent it would shorten it.

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No. 75, dated Noakhally, the 24th November, 1884.

From—Baboo Chandra Kumar Roy, M.A. and B.L., First Munsif of Sudharam,
To—The Secretary to the Government of Bengal, Revenue Department.

In reply to your letters Nos. 2434T—R and 1670-916L—R, dated 23rd October last and 4th November current, respectively, I have the honor to submit the following notes on Baboo Mohini Mohun Roy's pamphlet on the procedure sections of the Tenancy Bill.

2. My views on the summary sale and special procedure chapters of the revised Tenancy Bill were expressed in my report submitted on the 28th July last, published in pages 540-9 of the extra Supplement of the *Calcutta Gazette*, dated 15th October last, and need not be repeated here.

3. The Part I of the pamphlet (procedure for the sale of permanent tenures) should, in my opinion, be extended to the transferable holdings also; and in order to benefit the petty tenure-holders and ryots in districts of Chittagong Division, where the head-quarters is not within easy reach from all parts of the country, the place of registration and sale should be transferred to Munsif's Court, when their annual rent is not above Rs. 100. The sale and registration of larger tenures may take place in the court of the Subordinate Judge or District Judge, where there is no Subordinate Judge as in this district. I am very much against the sale of small tenures and holdings at the head-quarters far away from the homes of the persons interested in them merely for the convenience of the zemindars, in order to relieve them of the petty costs and trouble of engaging an agent or pleader in every mofussil court. It is practically seen that the same tenure fetches much higher price in the execution of decree sale held in Munsif's Court than in sale under Regulation VIII of 1819 in the Collector's office. The reasons are apparent.

4. On the simplified procedure suggested in Part II of the pamphlet, I beg to add that the petition mentioned in section 11 (page 28) for realization of subsequent arrears should either be verified or supported by an affidavit, and any wilful mis-statement in it should be subjected to summary punishment by the court to which it shall be made. This section may be extended to tenures and holdings created by registered deeds.

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No. 1980—1024 L.R., dated 3rd December, 1884.

From—Officiating Under-Secretary to the Government of Bengal,

To—Secretary to the Government of India, Legislative Department.

In continuation of the letter from this Office No. 1906 T. R., dated the 15th September 1884, I am directed to submit copies of the letters noted below, regarding *utbandi* tenures.—

(1) Letter from the Commissioner of the Presidency Division, No 24 R. L., dated the 17th September 1884.

(2) Letter to the Commissioner of the Presidency Division, No. 2113 T. R., dated the 3rd October 1884.

(3) Letter from the Commissioner of the Presidency Division, No. 28 R. L., dated the 30th October 1884, and its enclosures.

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No. 24 R.L., dated 17th September, 1884.

From—A. SMITH, Esq., Commissioner, Presidency Division,

To—The Secretary to the Government, Bengal.

WITH reference to your telegram of the 31st ultimo, I have the honour to give below an analysis reports of the district officers regarding *utbandi* tenures.

2. Mr. Stevens gives the following account of the *utbandi* tenures in the 24-Pargannas. Such tenures prevail only in the northern part of the district, where lands in the khas possession of landlords are leased out to cultivators under verbal agreements. The tenancy ceases at the end of either the season or the period of the lease. The usual term is a year, after which the land may lie fallow on account of the exhaustion of its strength or because no one has come forward to take it. Hence the origin of the name *utbandi*. No occupancy-right grows in such tenures, and before the crop is reaped the landlord makes sure of the rent by watching that it is not taken away from the fields before his dues are satisfied. These tenures are known in the south of the district as *karfa* or *thika*.

From the very nature of tenures the ordinary incidents of a raiyati tenure cannot, Mr. Stevens thinks, apply to them, as there is an express understanding sanctioned by custom that the landlord will enter after the expiry of the term. But as land is becoming improved, and as there is an increasing demand for land amongst the cultivating classes owing to increase of population, the area hitherto classified as *utbandi* is daily becoming less and less, since landlords are quite open to make settlements with raiyats offering favourable rents.

Mr. Stevens does not think that the account of such tenures given by Dr. Hunter in his Statistical Report of Nuddea, as they stood in 1872, is in any way defective, but that the tendency is now towards a decrease in the arrears of such lands.

It is the opinion of Mr. Stevens that, so far as *utbandi* and similar tenures in his district are concerned, the saving of customary conditions provided for in the Bill (section 214) is sufficient.

3 In Nuddea the *utbandi* systems prevails to a large extent. A full account of these tenures is given in Dr. Hunter's Statistical Account. Mr. Tayler reports thus on these tenures: "The *utabandi*—the system under which uncultivated lands are brought under cultivation—and the actual area cultivated is measured and paid for at the rate prevailing in that

part of the country. Cultivators who take such lands are not obliged to cultivate them a second year, but as a rule they can keep them for certain for three years if they elect to do so. Generally the lands under this system are cultivated from one to five years, and then left fallow for the same period. The cultivators acquire no right of occupancy, nor do they desire to do so. There being more lands in the district than are required by the cultivators, they prefer to take lands which have been lying fallow for a term of years, and which are consequently likely to yield the more, to retaining the same land and cultivating it for once 12 years. The zamindars, on the other hand, are reluctant to allow cultivators to retain such lands for any length of time, both with the view to prevent their acquiring occupancy-rights and to prevent deterioration of such lands. In some cases zamindars get *salami* when allowing new cultivators to take such lands.

Before the introduction of Act X of 1859 raiyats were in the habit of taking any portion of such lands without permission of the landlord, but now they give notice and commence cultivation after sanction has been received.

The lands available for *utbandi* cultivation include—

*First, Khamar* lands, which include all lands in estates under the direct control of the zamindar, whether cultivated or not and all waste lands.

*Second, naksau* or *jamai* lands relinquished by raiyats and not re-let to fresh raiyats.

*Third,* all new *char* lands. The rate of rent is fixed for each village, except in the case of the third kind, for which the rate is fixed by agreement between the landlord and tenant. Tenants holding *jamai* lands sometimes, when unable to cultivate the whole area settled with them, let them in *utbandi* at somewhat higher rates.

During the cold weather months, and sometimes after the crop has first made its appearance, amins are deputed to measure the lands thus cultivated, and subsequently the gumashtas collect the rents.

The system is very well known and apparently appreciated by the raiyats. At first sight it might be thought that these raiyats are not so well off as their neighbours who own *jamai* lands, but such is not really the case. They are continually cultivating renovated lands that require no manure, and have to pay for the area actually cultivated, whereas those holding *jamai* lands have to pay for their holdings, whether cultivated in whole or in part or not at all; and, if they cultivate the whole, they must generally go to the expense of manuring, or else expect poorer crops. There are zamindars who have extensive tracts of such lands, which they would be very glad to let in jama; but few can be induced to take them, notwithstanding that the rate of rent may be as low as 10 annas per bigha.

The Collector also refers to Dr. Hunter's Statistical Account of Bengal, and to the note made by Jogendra Chunder Mowlik under section 6 of Act VIII of 1869.

4. *Jessore.*—There are few tenures of this description in this district. They are generally confined to waste lands and bhil lands, which are for the whole or the greater part of the year under water, and which are cultivated by the raiyats under special contract generally from year to year. These lands are taken at fixed or progressive rates of rent on terms agreed to by the raiyats. The landlord cannot, or at all events does not, enhance the rent, which should be payable in proportion to the quantity of land reclaimed and cultivated. The same raiyat can have the same lands for any number of years, but the custom is that he does not acquire a right of occupancy. As a matter of fact, the raiyat is not disturbed as long as he pays his rent and behaves himself well. The landlord does not enhance the rate originally agreed to if the raiyat refuses to pay such increase; but if there are conditions in the lease or conditions verbally agreed to, the rate is enhanced. The raiyat can be ejected at the will of the landlord, as the tenures are not *kaimi* or *pucca.*

The zamindar claims no rent for any year for land not cultivated, though it remains in the possession of the raiyat. The land is gradually cultivated by the raiyat, and after the crops are harvested the land is measured and the rent is assessed. The assessment is of course made at the rate originally agreed to.

With regard to applying the principles of the proposed rent law to *utbandi* tenures, the Collector is of opinion that the customs of the country are pretty certain to be good for the country itself. The people have done well enough with their customs, and, if there was not something radically good and sound in these customs, they would not live. He does not think that anything has been shown to justify interference with the usual customs in regard to *utbandi* lands and the extension of the principles of the Bill to them. He would let them stay as they are, and he does not think that much good can result from preventing the people concerned, who are the most interested, making their legal bargains in their own way.

5. *Khulna.*—The *utbandi* system is known only in one pargana (Khoraria), where the land is bad. The tenure is not a favourite one with the zamindar, as the sole risk is with him.

6. *Moorshedabad.*—*Utbandi* does not prevail to any great extent in this district, and is to be found only on the east side of the Bhagiruthee, chiefly in pargana Goas. The cultivator under this system, who has no rights whatever, either of occupancy or otherwise, takes the land by verbal permission of the zamindars, no written agreement being entered into, after which the holding is measured and assessed at the local rates as soon as it has been sown down and without any reference to the prospects of the crop. The rent so assessed is realized then and there, and this custom is observed in *do-fasli* lands each time the crop is sown, that is, twice in the

year, the reason being that the cultivator if left to himself would disappear immediately after harvest.

The Collector would deprecate any attempt at legislative interference here on the ground that the zamindar does not want it, and that if the cultivator is to be turned into a privileged person, possessing rights, and only to be ejected with difficulty, the result will be that the land will be allowed to remain waste to the mutual detriment of both parties. The arrangement is a fair and natural one; it is well understood, and the burden of proof is surely upon those who would replace it by something new, and not on the supporter of the perhaps antiquated policy of "let well alone."

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No. 2113T.-R., dated 3rd October, 1884.

From—H. H. RISLEY, Esq., Officiating Under-Secretary to Government, Bengal,

To—The Commissioner, Presidency Division.

I am directed to acknowledge the receipt of your letter No. 24R.L., dated the 17th September 1884, with which you submit an analysis of the reports regarding *uthandi* tenures from the officers in charge of the districts of your division.

2. In reply, I am to call your attention to the manifest discrepancy between the account of those tenures now given by the Collector of Nuddea and that quoted from the same officer in the report of the Board of Revenue on estates under direct management in 1882-83. The Lieutenant-Governor is surprised that the latter account, which directly contradicts the former, should have been submitted to Government without any attempt being made either by yourself or by the Collector to reconcile the severe condemnation of the *uthandi* tenure contained in the one with the distinct approval recorded in the other. I am, therefore, to request that Mr. Tayler may at once be called upon to explain this, which is by no means a matter of slight consequence.

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No. 28R.-L., dated 30th October, 1884.

From—A. SMITH, Esq., Commissioner, Presidency Division,

To—The Secretary to Government, Bengal.

With reference to your No. 2113T.R. of the 3rd instant, I have the honour to enclose copy of the correspondence noted in the margin.

Collector of Nuddea, to Commissioner, Presidency Division, No. 1577G., dated 21st October 1884.
Commissioner, to Collector, No. 24RL. of 24th October 1884.
Collector, to Commissioner, No. 1644 of 25th October 1884.

2. Mr. Tayler's remarks quoted in the Board's report on Government estates for 1882-83 were transmitted by my predecessor. Mr. Tayler's explanation is, practically, that the remarks quoted were written by him with reference to his khás mahál only, and from the point of view of a proprietor anxious to have all the lands of his estate tenanted. In his letter, the substance of which was given by me, he reported such facts with reference to the system as a whole as existed generally throughout the district.

3. In the descriptions of the *uthandi* system itself there is very little difference between the two accounts. In the latter letter the effects of the system on the land are not noticed at all. In the former letter Mr. Tayler says that the prevalence of the system has resulted in the inferiority of the soil. It is of course possible that, under a system of regular cultivation, with adequate drainage, irrigation and manure, the lands might be improved; whether under present circumstances they would repay the outlay is another question. It appears to me perfectly clear that it is the character of the soil, and the style of cultivation suitable to it, that have brought about the *uthandi* system, and not the system that has resulted in bringing about the character of the soil.

4. As the increasing demand for produce and rising prices permit the regular extension of cultivation to lands that will not now repay regular and steady cultivation, the *uthandi* system will be gradually replaced, wherever possible, by the ordinary system, just as in frontier districts lands formerly used by aboriginal tribes for jooming are now in many places steadily cultivated.

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No. 1577G., dated 21st October, 1884.

From—W. V. G. TAYLER, Esq., Collector, Nuddea,

To—The Commissioner, Presidency Division.

With reference to your memorandun No. 86R.L., dated the 9th instant, have the honour to report that the account given by me, which has been quoted by the Board in their Report on Estates under Khás Management in 1882-83, had special reference to the khás máhál in this district under my management, and notably to those in the sub-division of Meherpore, and not to the system as a whole: that my No. 1354G., dated 6th ultimo, referred to the system generally, and even in it I reported that there were zamindars who would be glad to let in jama lands now held under the *uthandi* system.

2. In our khás máhals, and especially in those within the Meherpore sub-division, all the lands of the mahál are of an inferior quality, and great portions almost unfit for cultivation, and consequently raiyats are unwilling to take such portions in the place even of those which, though fit for cultivation, have been cultivated for some years, and consequently unfit lands are allowed to remain unfit. In zamindaris, on the other hand, these tracts are more or less cultivable. More pressure is likely, too, to be brought on raiyats than would be the case in lands under Government officers, and hence more or less changes occur even from good to less good lands.

3. In the one case I gave expression to my views as to the adaptability of the system to a particular class of lands, while in the other I simply reported such facts with reference to the system as a whole, as existed generally throughout the whole district.

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No. 94R.-L., dated 24th October, 1884.

From—A. SMITH, Esq., Commissioner, Presidency Division,

To—The Collector, Nuddea.

Your letter No. 1577G., dated the 21st instant, on the subject of the *utbandi* tenures. It seems to me that the explanation furnished by you is not altogether satisfactory. Taking for granted that the account previously given had reference to *utbandi* tenures in khás maháls only, your observations as quoted in paragraph 36 of the Board's Report on the administration of Government Estates for the year 1882-83 indicate that the *utbandi* system *generally* was condemned. You wrote—"The prevalence of the *utbandi* system *in this district* has resulted in the inferiority of the soil." But according to the present account this system "is *appreciated* by the raiyats." I request that you will reconcile more clearly the discrepancies between the two reports by *return of post*.

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No. 1644G., dated 25th October, 1884.

From—W. V. G. TAYLER, Esq., Collector, Nuddea,

To—The Commissioner, Presidency Division.

With reference to your letter No. 94R.-L., dated the 24th instant, I have the honour to state that the sentence quoted by you has not been completed; it should be "has resulted in the inferiority of the soil and the consequent neglected state *of such mahálś* under khás management." This sentence refers only to *such mahálś under khás management*, and not to the district in general.

2. In the district as a whole the system is appreciated by raiyats, especially in zamindáris, for the reasons already given; but I am still of opinion that in most of our khás mahálś it would be better to introduce the *jamai* system, and, as I before stated, there are even zamindárs who are of the same mind as regards tracts of land within their zamindáris.

3. I am at a loss to know what further explanation to give, and would only therefore state that, what is appreciated by the raiyat is not necessarily good for a mahál in a zamindár's point of view.

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No. 52, dated 3rd December, 1884.

From—SURYA NARAIN SINGH, Secretary, Bhaugulpore Landholders Association,

To—The Secretary to the Government of India, Legislative Department.

I have the honour to forward in a separate cover ten copies of a memorial (one copy of the memorial is signed by the president of the meeting) and notes on the Bengal Tenancy Bill on behalf of the zemindárs and other landholders of the Bhaugulpore Division, in accordance with a Resolution passed at a public meeting held on the 25th July last, and five copies of the Resolutions passed at the said meeting, for the favourable consideration of His Excellency the Viceroy and Governor General in Council.

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Dated 1st November, 1884.

*To—The Right Honourable the Viceroy and Governor General of India in Council.*

The humble memorial of the Zemindars and other Landholders of the Bhaugulpore Division—

MOST RESPECTFULLY SHEWETH,—That your memorialists presented to Your Excellency a memorial, dated 9th January 1884, on the Bengal Tenancy Bill of 1883, in which they set forth their grievances against the provisions thereof.

2. That since the presentation of the said memorial the Select Committee which sat on that Bill have submitted their Report, together with an amended Bill known as the revised Bengal Tenancy Bill.

3. That your memorialists regret to observe that although the officers consulted by Government on the Bill of 1883, many consisting of Commissioners of Divisions, Collectors and others, had given their opinion that it contained provisions most revolutionary in their character and injurious to the interests of the landholding class the said provisions have been retained only with slight modifications in the revised Bill, and that other provisions have been added which tend to make the position of the zemíndár very uneasy and worse.

4. That your memorialists beg to submit that the result of the deliberations of the Select Committee could not have been otherwise than it has been, when it is borne in mind that the members of that body supporting the views of the zemíndárs were numerically weak and could be outvoted on any proposition having for its object the furtherance of their cause. Under these circumstances your memorialists pray that the said body may be so constituted as to remove the disadvantage which the zemíndárs necessarily labour under from its present constitution.

5. That with regard to the provisions of the revised Tenancy Bill your memorialists do not propose to enter here into a detailed examination of them, as they crave leave to annex hereto notes setting forth their views on the said provisions.

6. That as to the general feature of the revised Bill your memorialists beg to submit that it, like its predecessor, the Bill of 1883, tends to unduly interfere with the cherished rights of the zemíndárs conferred and confirmed by the solemn enactment of 1793, to oust the Civil Courts of their jurisdiction, and to centralise more power in the hands of the Revenue authorities against the express declaration of the Code relating to the Permanent Settlement; while it contains unworkable provisions and others which would lead to strife between landlords and tenants, it fails to secure the good of the actual cultivators of the soil by encouraging the growth of the middlemen class; and lastly, while fettering distraint with so many restrictions as to make it practically useless, it affords no facility to the zemíndárs for the speedy realization of arrears of rent.

7. That from the meetings held in various parts of the province it is apparent that neither landlords nor tenants are satisfied with the said Bill.

8. That under the circumstances humbly set forth in this memorial your memorialists pray that Your Excellency would be pleased to direct that the Bill be withdrawn.

9. That should Your Excellency in Council be still pleased to proceed with the Bill your memorialists beg to submit that, in so intricate and important a matter as the land questions legislation should be made after the fullest enquiry. In the present instance, your memorialist, crave leave to urge that such enquiry has not been made. Without meaning in any way to disparage the labours of the Bengal Rent Commission or the value of the official and other opinions obtained on the two Bills, your memorialists feel constrained to state that the said Commission did not proceed in the way generally adopted in such cases. The diversity of opinions expressed by responsible officers of Government and the non-official community and by public bodies and the press on the merits of the proposed legislation, and the need for further information felt by the Select Committee, as appears from their Report and also from the letter of the Government of India dated 5th May last, and of the Bengal Government dated 24th May 1884, fairly show that there is yet room for further enquiry, and the means heretofore adopted, namely, asking Government officials to report, is not the best plan of conducting such enquiry. Under these circumstances your memorialists pray that Your Excellency would be pleased to appoint a Commission consisting of non-official European and Native gentlemen with power to take evidence, and to suspend the proposed legislation until the said Commission shall have made its report.

10. That your memorialists have every reason to believe that the result of such enquiry would show how utterly unfounded are the charges generally preferred against them by those who advocate the present legislation, and would enable Your Excellency to do them that justice which they have a right to expect and which guides the British Government in its dealings with the various subject races that have been placed by Providence under its rule.

And your memorialists, as in duty bound, shall ever pray.

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*Notes on the Revised Tenancy Bill, 1884 by the Committee of the Bhagalpur Landholders' Association.*

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## CHAPTER I.

*Sec 3, Sub-Sec. 1.*—It appears that the definition of "Estate" is taken from the Cess Act of 1880 B. C., where in section 4 Estate is defined to be "land included under one entry in the general Registers of revenue-paying lands and of revenue-free lands prepared and maintained by the Collector of a district under the Land Registration Act of 1876 B. C. and any similar law for the time being in force."

The word proprietor is defined in the Bill to mean a person or a number of persons owning an estate.

The proviso attached to sub-section (1) is rather invidious. If Government cannot be called proprietor with reference to its own lands, then the position of the tenants under it would be most anomalous. A person holding land under Government will not be a raiyat within the meaning of the Bill, and will not enjoy the privileges of a raiyat, *vide* sec. 5, sub sec. 3. Again, if a person takes a farm of a Government mehal what would be his position? He cannot be called a tenure-holder as defined in the Bill, because a tenure-holder is one who derives his right from a proprietor or another tenure-holder, and as shown above Government is not a proprietor, neither is it a tenure-holder. The position of tenants holding under the Government lessee would be worse. They cannot be raiyats, because in order to be a raiyat a person must, according to the Bill, hold under a tenure-holder or a proprietor, and the Government lessee is neither the one nor the other. Consequently the position of tenants in Government estates would be rendered most deplorable.

*Sec. 3, Sub-Sec. 2 & 3.*—Would rent-free holders, whose lands are not registered in the Collectorate, be deemed to be proprietors or tenants or tenure-holders? They are not proprietors as they do not own an estate. They are not tenants as they do not hold under another person. Probably such persons are included in the definition of tenure-holders, but what if the rent-free holding should be anterior to the Permanent Settlement? What if the lakherajdar should himself be cultivating the land all along or now? In the latter case would the lakherajdar be a raiyat?

*Sec. 3, Sub-Sec. 9.*—The Fusli year commences in Asin, but for agricultural purposes in districts where the Fusli year prevails the year practically begins in Asar and ends in Jeyth. Hence under the present law all notices of enhancement are required to be issued in or before the month of Jeyth.

## CHAPTER II.

The provisions of this chapter are liable to the following objections:—

(*a*) They will give rise to endless complications in the relation existing between landlord and tenant.

(*b*) They will tend to increase the number of middlemen.

(*c*) Sec. 37 instead of checking sub-letting will have the effect of encouraging it and will ultimately create a number of petty middlemen whose existence was previously unknown, and whose principal business will be to fatten on the soil at the expense of the actual cultivators. It is now proposed to deal with all these points together. It is said that difficulty is often felt in deciding whether a tenant belongs to the class of raiyat or tenure-holder, and hence the necessity of defining the position of these classes. The number of cases in which the question arises whether a particular tenant is a raiyat or a tenure-holder is not large; granting that such questions frequently come before the courts, it is inexpedient to lay down hard and fast rules by which the decision of the court is to be guided. When a question of this nature comes before a court for trial, the best thing it can do is to decide it according to facts that may be proved before it in connection with the case. The suggestions on this point made by Babu Surja Narain Singh, B. L., in this letter to the Commissioner of Bhagalpur, published in page 78, Vol. II. of the Report of the Bengal Government on the proposed amendment of the law of landlord and tenant are worthy of consideration. The definition of tenure-holder as given in the Bill may be correct in a certain sense, but it is hardly a definition in the proper sense of the word. It is true that a tenure-holder generally collects rent and does not himself cultivate the land, but at the same time it should be considered that a tenure is not granted simply that the grantee might collect rent. Mr. Beames, whose views, it appears, have been adopted by the Select Committee in the framing of the definition of tenure-holder, says that "when a zemindar lets land to a tenure-holder, he considers that he is granting, and the tenure-holder considers that he is obtaining, the right to collect rents from a number of cultivators already actually in occupation of the land so granted." But it is submitted with deference that this view of the origin of a tenure is not exhaustive. A tenure carries with it rights and privileges of a valuable nature and not a mere right of collecting rent, and it may be that this right of collecting rent might not have been in the estimation of the parties when the tenure was created. People generally speak of a Lakheraj tenure, Mocuraree tenure or a Brahmoter tenure. But it is very doubtful, whether when a particular tenure, say a Lakheraj tenure, was originally granted, the grantor simply meant that the grantee should make collections from the raiyats in occupation. It might have been the case that the land demised was not originally in occupation of tenants. The lakherajdar might have cultivated the land himself. Subsequently he might have settled the land with raiyats. Therefore it is not always the fact that tenure-holder means a person who has acquired the right from a proprietor to collect rent. That in a majority of cases he collects rent may be true, but that is no reason why the fact of collecting rent should be made the basis whereon to ground the definition of a tenure-holder. Of course in deciding whether a person is a tenure-holder or a ryot, the fact whether he collects rent or not may be among other circumstances taken into consideration. But no such inflexible rules as prescribed in the Bill should be laid down.

In the next place it is submitted that the provisions of section 37 will scarcely be sufficient to prevent sub-letting. On the contrary when occupancy raiyats see that by sub-letting more than half of their holding they would be able to enjoy certain immunities and privileges which

they could not have enjoyed as occupancy raiyats, they would all the more be encouraged to sub-let. The mere fact that certain rules may be framed for subjecting their holdings to summary sale procedure is nothing compared to the advantages that are held out to them. Then again suppose an occupancy raiyat of 2 bighas of land sub-lets 1½ bighas, he is immediately turned into a tenure-holder. This, of course, is absurd in the very face of it. A tenure-holder of 2 bighas is opposed to ordinary ideas on the subject. Lastly, the provisions in question will operate injuriously to zemindars, for an occupancy holding converted into a tenure will escheat to the crown on failure of heirs, which it would not have done had it remained a raiyatty holding.

The forcible conversion of raiyatty holdings into tenures is opposed to the customary law of the country, and has been almost uninversally condemned. The reproduction of such a provision, though in a modified shape, in sec. 5, sub-sec. 5, is highly objectionable. It will be better to cite here the remarks of Mr. Reynolds on the corresponding section of the Rent Commission Bill:—"The really valid objections to the principle of the measure lie on the surface. It is an arbitrary rule overriding custom and contract and placing a number of persons in a position which they never desired or intended to fill. It trenches upon the rights of the zemindar by creating tenures without their consent. It cuts the knot instead of untying it and sets aside the present law and existing engagements in order to provide for a class of cases which cannot after all be very numerous." The presumption created under sec. 5, sub-section 5, is not warranted by existing circumstances. Undue encouragement should not be afforded to the increase in the number of tenure-holders. Why should the relation existing between the landlord and his tenant undergo a change solely by the act of one of the parties without the consent of the other party, namely the landlord.

But the principal objection to the provisions of this Chapter and to sec. 37 is that they will increase the chain of middlemen between the proprietor and the actual cultivator of the soil. The position of the under-raiyats will be pitiable in the extreme. Of course, it is admitted on all sides that it is inexpedient to put a stop to sub-letting altogether, but that is no reason why facility should be given to the growth of so many sub-tenures of a novel kind.

## CHAPTER III.

*Sec. 7, Sub-Sec. 1.*—The use of the word "customary rate" in this sub-section would create much confusion. As a matter of fact, customary rate, as it was understood in the Regulations, does not exist. It would be better to substitute the words "prevailing rate."

*Sec. 7, Sub-Sec. 3.*—The existing law relating to enhancement of rent of tenures should be affirmed. It is not expedient nor necessary to make any change in it.

*Sub-Sec. 3, Clause (a).*—It would be unjust to the landlord to apply the provisions of this clause, where the tenure was originally granted for clearance of jungles, and in consideration of which a low rent was fixed. In this case when a landlord subsequently demands an increase of rent it would not be fair to take into consideration as to who cleared the jungles, because the tenant took the tenure with condition that he would bring it into a state of cultivation, and for this he got a very low rate fixed.

*Clause (c).*—Would the cost of collection mean the actual cost incurred by the tenure-holder or the ordinary cost of collection generally incurred by landlord? If the former, it would not be just to the proprietor or the superior tenure-holder.

*Secs. 8, 9, & 10.*—These sections are very hard and unjust towards the zemindars. Tenure-holders are generally influential classes of persons, and they can well afford to pay the increase demanded. Besides, where a very low rent was originally fixed, as in the instance given in note on Sec. 7, Sub-Sec. 3 (*a*), it would be very unjust to limit the zemindar to double the original rent.

*Sec. 11.*—In the heading of the section are the words "other incidents of tenures," but the section deals with only permanent tenures. What are permanent tenures? Are they tenures contemplated in section 6 of the Bill? The Bill defines tenure-holders. It should also define what are permanent tenures, at least give illustrations of them. Permanent tenure as understood in this country is generally a tenure that is held in perpetuity and at fixed rents, and descends from generation to generation. Some such definition or description is necessary in order that raiyats converted into tenure-holders by provisions of the Bill may not put forward frivolous claims to be considered as permanent tenure-holders.

*Sec. 15, Sub-Sec. 1.*—"On the joint application of the transferer and the transferee."—Provisions should be made in case where, as between the transferer and the transferee, one party is willing and the other is not willing to apply to the zemindar for registering the transfer.

*Sec. 21.*—"Or any share thereof."—Section 26 of the present Rent Act (Act VIII of 1869 B. C.) guards against the division of rent which may be caused by the transfer of a portion of a tenure, by enacting "that no zemindar or superior tenant shall be required to admit to registry, or give effect to any division or distribution of the rent payable on account of any such tenure nor shall any such division or distribution of rent be valid and binding with-

out the consent in writing of the zemindar or the superior tenant." Section 97 of the Bill also makes provision against the transfer of a portion of a holding. The definition of the word "holding" would seem to include a tenure, but this should be made clearer.

## CHAPTER IV.

Raiyats holding at a fixed rent or rate of rent.

It is unjust to promote these raiyats to the position of tenure-holders. It has been held by the High Court that the status of these tenants is not higher than that of the occupancy tenants. The only superior advantage they enjoy is that by the operation of the rule of presumption they are entitled to sit at fixed rates. In other respects their status is the same as that of occupancy tenants.

## CHAPTER V.

*S S. 25, &c.*—It is important to remember how these sections came to be engrafted on the Bill of 1883. The Government of India originally proposed that occupancy right should attach to all raiyatty land and should be enjoyed by all settled raiyats, nomad raiyats and under raiyats being excluded (*vide* its letter to the Secretary of State for India, dated 21st March 1882, para. 62.) This most revolutionary principle was of course not sanctioned by the Secretary of State for India, who, in his letter, dated 17th August 1882, despatched to the Government of India, thus observes:—"Your proposal, in the first place, annuls the distinction, deeply rooted in the feelings and customs of the people, not only in Bengal, but in most parts of India, between the resident or permanent and the non-resident or temporary cultivator. This, when your avowed intention is to restore to the raiyats their original position and rights, appears to me anomalous and undesirable." Then the Secretary of State proceeds to state how legislation on this point might be made without sacrificing the principle of Act X of 1859, and makes the suggestion that every resident raiyat shall have a right of occupancy in the land which he occupies and pays rent for, and that a resident raiyat shall be one who, or whose ancestor, has occupied any land in the village or estate for 12 years. It was thus that the above sections came to have a place in the said Bill. While every credit is due to the Secretary of State for India for his laudable desire to preserving the long standing distinction between khudkasht and pyekasht tenants, it must however be observed that this distinction is practically done away with in the Bill. The suggestions made by the Secretary of State himself are scarcely sufficient enough to keep the distinction, and of this the Government of India was well aware, for it thus observes in its letter, dated 17th October, 1882:—"Nor do we conceive that our proposal differs more widely "from the principle of Act X of 1859 than that which your Lordship has submitted "for consideration. That proposal, equally our own, *ignores* (*all distinction based on residence.*" Here it must be observed that the object of the Secretary of State was not to ignore the distinction, although the suggestions he makes to carry out that object has the effect of ignoring the distinction. It is not proposed here to discuss the rights and status of khudkashst ryots. It is a subject on which much can be said from the zemindars' point of view; besides it is admitted on all hands that whatever rights they had, have been lost in obscurity and now it is almost imposible to trace those rights. Mr. Justice Steers in the great rent case observes thus:—"To be a khudkasht ryot at all, implies that the ryot must not only be a cultivator of lands belonging to the village in which he resides, but he must be a hereditary husbandman. A khudkasht right is not acquired in a day, but is transmitted; and it has never, so far as my knowledge extends, been laid down what exact length of holding gives a tittle to a tenant to consider himself a khudkasht ryot." Mr. Mackenzie who takes so much pleasure in ridiculing Mr. Justice Steer, admits that "it is perhaps in the present day impossible and useless to attempt to rehabilitate the khudkasht or resident ryot." Then he says some prescriptive test of residence must be adopted, but in his opinion long time is not the essence of khudkasht ryot's title. What is necessary to see is that the ryot "gives reasonable evidence of his intention to cultivate permanently," and that three years is sufficient to raise the presumption of such an intention. So the right which in the opinion of Justice Steer is not acquired in a day, and which Mr. Mackenzie modestly says must take at least three years to acquire, is under the sections of the Bill given to a ryot the moment he touches the land. As to the opinion of Mr. Mackenzie, it is sufficient to quote what Sir John Shore, afterwards Lord Teignmouth, says on this point. Regarding questions of this nature, the opinion of one who wrote his minute only 28 years after the East India Company had acquired the Dewany should be more valued than that of a gentleman occupying the position of Mr. Mackenzie. Sir John Shore in paragraph 389 of his minute of June 1789 given in Vol. I of the Fifth Report thus says of the khudkasht ryot:—"It is, however, generally understood, that the ryots by long occupancy acquire a right of possession in the soil, and are not subject to be removed, but this right does not authorize them to sell or mortgage it, and it is so far distinct from a right of property." But Mr. Mackenzie cites another passage from the minute of Sir John Shore, which occurs in paragraph 225 and is to this effect.—"Those who cultivate the lands of the village to which they belong, either from length of occupancy or other cause have a stronger right than others, and may in some measure be considered as hereditary tenants and they generally pay the highest rent." Mr. Mackenzie lays much stress on the words "other" and contends that time is not essential to the acquiring of khudkasht tenure; but he does not explain what the "other cause" is, and

well might he omit to give any explanation of it, for the very affirmation of the existence of some other cause precludes the supposition that mere residence was enough for the conferring of the right of occupancy. The other causes not having been explained or being untraceable, the only ostensible ground whereon the right is known to exist is prescription. It appears from Mr. Mackenzie's quotations that pottahs to the khudkasht ryots, or those who cultivated the land of the village where they resided were given without limitation of period, the reason being that pottahs prescribing time would have been regarded, as Sir John Shore says, as diminishing the force of prescription which had established a right of occupancy in favour of the ryots. It is therefore wrong to say that length of time is not the essence of the right. This length of time was cut down to 12 years by Act X of 1859. Mr. Mackenzie was for shortening the period to three years, and the present Bill swept away time altogether.

VILLAGE.

*Sections 25 & 27.*—Mr. Justice Field thus remarks in his notes appended to the Rent Commission:—

"The village community, if it ever existed in Lower Bengal, has long been broken up, and the definition of a 'village' would raise insuperable difficulties. Doubtless this was felt by the framers of Act X of 1859, and influenced them to abandon the element 'residence in the village.'"

The definition given by the Bill of the word "village" does not remove the difficulties referred to by Mr. Justice Field. It would create a good deal of confusion. It might happen that the area of two or three villages belonging to different zemindars might be included in a village map of the revenue survey and thus form one village. The result would be that a ryot holding for 12 years ryotty land in a village belonging to one zemindar would acquire right of occupancy in the land of another village belonging to a different zemindar from the moment of his taking settlement of such land. Again the provision empowering a settled ryot in an estate to acquire right of occupancy to all lands held by him in that estate would create great difficulties, specially where large estates are concerned. The select committee are aware of this difficulty. It is submitted that the words "estate and village" in sections 25 & 26 be omitted, and in their place the word "*mauza*" be substituted.

*Section 26, Sub-sec. 2.*—In this sub-section it is laid down that a ryot should be presumed to be an occupancy ryot until the contrary is shown. In letter No. 54, dated 17th August 1882, already referred to, the Secretary of State condemned in strongest terms the proposal of the Government of India to attach occupancy right to all ryotty lands. According to the Secretay of State such a proposal was against the ancient custom and the existing law of Bengal; yet the Revised Tenancy Bill adopts it in a somewhat modified form. If according to the Secretary of State a provision which lays down that all ryotty tenures are occupancy tenures, is against the customary and settled law of Bengal, then a presumption to the same effect is equally so. Besides it will not be easy for zemindars to rebut such a presumption considering that under the Bill, the holding of lands under other landholders included in the same estate, or in a common village map, or in different estates created since the 1st of January 1853, for a period of 12 years, would confer the status of a settled ryot.

*Section 31, Clause (a).*—This is a very wide provision. The powers given under it should be clearly defined. Suppose a ryot take land for the purpose of cultivation, can he grow orchard upon it.? It would seem as if under this clause, he could—but this would be injuring landlord's interest, and unduly favoring the ryots. The zemindar is deprived of his half share of the fruits which he could have got had he made settlement of the land for orchard purposes; he could also have got a higher rate of rent if the settlement had been a *Nukdee* one. It may be useful to cite the words of Sir John Shore on this point—speaking of the khudkasht ryots, he says that these "ryots who hold by this tenure cannot relinquish any part of the lands in their possession, or change the species of cultivation, without a forfeiture of the right of occupancy, which is rarely insisted upon and the zemindars demand and exact the difference." *Vide* the minute of Sir John Shore, paragraph 406, pp. 162—63, Vol. I. Fifth Report. One species of cultivation may be changed for another without rendering the land unfit for the purposes of tenancy, but this would be intefering with the rights of the zemindars.

*Section 31, Clause (f).*—Mr. Reynolds admits that "there are historical grounds for saying that the right was not originally transferable by sale, by gift, or by will, though no doubt the reservation made in 1793 would fully justify the legislature in declaring it to be so transferable now, if good reasons for the change could be assigned." The latter part of the passage is not based on valid reasoning. If the ryots had not originally a particular right, and the creation of it in their favor would affect the landholding class, ought not the latter to be compensated, and ought the right to be created unless there be very cogent reasons for it? It is said that it is for the good of the ryots that the right should be given to them, and that the Legislature is empowered by the reservation clause in the Permanent Settlement Code to confer the right. But there are many things which might do good to ryots, and yet it would not be reasonable or just to bring them about by legislation, specially when such legislation would trench upon the rights belonging to another class of the community. In the memorial submitted to Government from this Division in January last, the clause in question was

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discussed, and therefore it is not necessary to dwell upon the subject in these notes. Granting that the Government has the power claimed by Mr. Reynolds in its behalf, it may be asked, is it good for the ryot that he should have this power given him. The arguments adduced by the Rent Commission against the power to mortgage apply with equal force to the power of sale. It is admitted that the ryot is improvident in his habits, that a wedding or a *sraddh* turns his brain. "A bad season, sickness, or not uncommonly his own improvidence prevents him from repaying the loan, which is rapidly swelled by interest." Besides, from the Supplement to the *Calcutta Gazette* of July last, it appears that sale of occupancy jotes by Sonthal ryots is bearing disastrous fruits in the Sonthal Pergunnahs; and there is not the least doubt that the evil effects will be felt throughout Bengal and Behar if occupancy ryots are given power of transfer.

*Section 31, Clause (h).*—"His right of occupancy shall be extinguished."—Why not retain the words of the Bill of 1883—"his right in the land shall go to the landlord."

*Section 32, Sub-section* 2.—The words "and any other particulars which it is necessary the purchasers should know," should be added after the word "incumbrances."

As a restriction on transfer, it may be provided that no holding should be transferred in respect of which arrears of rent are due.

*Section 32, Sub-section* 4—The words "on plain paper" should be inserted after the word "application."

The latter part of the sub-section is objectionable. It is difficult to see why all the procedure laid down in the former part of the section should be resorted to, if the ryot is simply made to abstain from selling the land.

*Section 34.*—The tenant, before he mortgages his holding to a third party, should be required to give notice to the landlord, so that the landlord might, if he so wishes, advance the money on the security of the holding. The notice should state why the money is required, and such particulars as a person advancing money should know, should also be inserted.

*Section 35.*—The landlord, as was provided in the Bill of 1883, should be given the power to purchase the holding from the donee.

*Sections 37—38.*—Remarks on "restrictions on subletting" have already been made, therefore it is not necessary to repeat them here.

### Enhancement.

*Sections 39—50.*—The observations made on this head in reply to the letter of the Commissioner of this Division are reproduced here:—

"While the Committee admit that the omission of the gross produce limit is an improvement in the Revised Bill, they at the same time are bound to say that the effect of the improvement is rendered *nil* by the provision which would limit the percentage of increase. This limitation is against the customary law of the country. It has always been the practice that lands when they are in a state of reclamation, are let out at very low rates, but when cultivation is developed, full rates are charged for the same. Again, it appears from the minute of Lord Cornwallis that an assurance was given to the zemindars that they would reap the benefit of an increase which they might expect to derive by inducing the ryots to grow more valuable crops. But the Bill breaks the pledge by imposing an arbitrary limit on the percentage of increase. Again, by fettering the freedom of contract, the Bill prevents ryots, who would have most gladly agreed, in many instances, to an increase beyond the limits contemplated by the Bill, from doing so. All that a Court of Justice need see is whether a ryot is a free agent in any contract of enhancement. If in transactions of more complicated nature, a court can arrive at a satisfactory conclusion on this point, it is not probable that there should be any great difficulty when the contract relates to matters of rent. The Committee fail to see why the legislature which would leave freedom of contract to poor and ignorant coolies when they engage to transport themselves to foreign and out-of-way places, should deny the same in case of ryots (many of whom, it is admitted, are more powerful than the zemindars) who would but gladly agree to an increase of rent in consideration of the profits they derive from their land. The Committee do not approve of the provisions laid down in sections 49 & 50. These would make enhancement practically impossible, regard being had to the already too many restrictions laid down in the previous sections."

In connection with this subject of the percentage of increase, it may be interesting to state how Government deals with its own tenants. The following will show what the rate of Government assessment is:—In reply to a question put by Mr. Woodal in the House of Commons on the 16th of August 1883, to Mr. Cross, the latter gentleman stated thus: "the average percentage increase of assessment effected by the revision is about in the North-West Provinces 14 per cent., in the Punjab 7 per cent., and in Bombay 32 per cent. * * * * * In Upper India, that is, the North-West Provinces and the Punjab, the assessment is a proportion of the rental value of the estate. Under the expired settlement the proportion was two-thirds. Under the revised settlement it is half of the rental value. But the rental has increased so much that the lower proportion now yields more revenue than the higher proportion yielded formerly. There are three reasons for this increase—Extension of cultivation, rise of prices, and improvements such as canals made by the Government."

If the Government is entitled to reap the advantages of the conditions set forth in the concluding portion of the above extract, why should not a private person be similarly entitled.

*Section 34, Clause (b).*—To regulate rents with reference only to prices of staple food-crops would be very unfair to zemindars. The minute of Lord Cornwallis has already been referred to. There occurs the following passage in his minute dated 3rd February 1790:—

"The rent of an estate can only be raised by inducing the ryots to cultivate the more valuable articles of produce and to clear the extensive tracts of waste land which are to be found in almost every zemindary of Bengal" As a matter of fact, sugarcane and other valuable articles are grown in this district on lands producing staple food-crops; in such cases it would manifestly be unjust to the zemindar to make the adjustment of rents depend upon the rise in price of staple food-crops.

The second ground of the present law has been divided into clauses (*b*), (*c*), and (*d*) of the Bill. But these clauses do not exhaust all cases; hence the omission of the latter part of the second ground of the present law, namely the words: "Otherwise than by the agency or at the expense of the ryot" is inexpedient. The Full Bench case of Poolin Behary Sen *versus* Watson & Co., reported in 9, Weekly Reporter, 150 F. B. gives instances governed by the latter portion of the 2nd ground of the present law. There it is said that an enhancement of rent can be had under the clause in question "where the increase has resulted from additional productiveness in the soil arising out of fertilising deposit or from increased facilities for disposing of the produce arising out of the construction of protecting embankments, or the introduction of railways, or the rise of new markets, or the generally increased facilities of communication which are caused by construction of ordinary metalled roads." It may be said that increase due to fertilising deposit is covered by clause (*d*) of the Bill. But what of the other illustrations given? Clause (*c*), section 184 of the Bill would hardly cover such cases, for its application is restricted to tracts where a table of rate is in force, and not to tracts where enhancement would be sought in the ordinary course. Therefore it is unjust to deprive the zemindars of the profit which they might expect to derive in cases not covered by clauses (*c*) and (*d*) of section 48 of the Bill. Such cases could come within the latter portion of the second ground of enhancement in the present law, and it is not fair to omit it in the Bill without inserting in its place any adequate substitute.

*Sec. 44, clause (a).*—Supposing an occupancy tenant pays 1 rupee per bigha, the prevailing rate is Rs. 2 per bigha; then why should the Court be debarred from decreeing more than 1 rupee 8 annas per bigha.

*Sec. 46.*—Cases might happen in which ryots would willingly pay higher rents if their landlords were to construct a particular work of improvement for instance, the digging of a canal or the raising of an embankment. In such cases it would be an act of grossest injustice to limit the landlord to the rate provided in section 41. As to section 46, sub-clauses (iii) and (iv) of clause (*b*) would not certainly encourage landlord to undertake extensive works of improvement. It would but be a poor requital for all the trouble and expense he had undergone, to be told that the land is not capable of bearing a higher rent, or that the tenant has incurred so much cost for untilising the improvement.

*Sec. 49.*—The provision about progressive increase is a new one. If a tenure is legally enhanceable, there is no reason why the enhancement should be made to extend over five years till the limit prescribed by law is reached. There never occurred any case in which any such difficulty as contemplated by the section had been felt. No ryot ever made a defence in any enhancement suit to this effect, that he would be most glad to pay enhanced rent demanded, only that the Court might order him to pay the full rate in the fifth year. Of course now that the section is framed, there will be plenty of such defences. In short, this section creates difficulty where there was none.

*Sec. 50.*—15 years is too long.

### Price Lists.

*Sec. 52.*—Considering the fluctuation of prices and that the same crop that is sold for a certain price in a particular market is sold at a different price in another market only a few miles off from the first one, it will not always be safe to base enhancement on price lists. Besides, any attempt to verify the price lists of the last 15 years is not likely to be successful.

*Sec. 53, sub-sec. 1.*—No commutation without the consent of both landlord and tenant should be allowed.

*Sec. 53, sub-sec. (a).*—It is unfair to the landlord that in fixing the money-rent, regard should be had to the average money-rent payable by occupancy tenants for land of a similar description. This will tend to lower the rent which the zemindar used to receive before the commutation; when a long average is taken one does not see the propriety of referring to the money-rent payable by occupancy ryots for purposes of comparison.

## CHAPTER VI.

### Non-occupancy Tenants.

The principles underlying this chapter, like those of the proceding chapters of the Bill, are opposed to the customary law of the country. The Bill gives the tenants-at-will power which they never enjoyed under the ancient laws of the land. The relation between this class of tenants and their landlord was always left to be governed by mutual contract. In the Statement of Objects and Reasons appended to the Bill of 1883, it is stated that "it is desirable to interfere as little as possible between tenants of this class and their landlords;" yet it is seen that the Bill interferes as much as it can between them. It is observed in the said statement further on that they (the tenants in question) should not be exposed to arbitrary rack-renting and evictions at the hands of their landlords. But where is the proof that these tenants are exposed to such treatment at the hands of their landlords? As to the charge of rack-renting hurled against Behar zemindars, the Committee would refer to the following extract which appeared in a local newspaper on the occasion of the visit of His Honour the Lieutenant-Governor to this district in 1883. "A good deal has been said about rack-renting and the down-trodden and miserable condition of the peasantry in Behar. It would be satisfactory if His Honour were to make personal enquiry on these points by visiting the estates of some of the principal zemindars in Behar; the archives of the Bengal office contain more than one resolution of the time of his predecessor regarding rack-rent in the estate of Kharackpur belonging to the Baneli Raj, but we are informed by Moulvi Abdul Majid, the present Settlement Officer of that estate, who is a Government officer of much experience in settlement works and a native of the district of Burdwan, and also connected with landed property there, that rents in Kharackpur are not higher than in that district. And it is a well-known fact that rents are very low in North Bhagalpur, where there is a demand for cultivators, not for land. His Honour should know something, too, about the extensive estate of Dharampur in the district of Purneah, belonging to Raj Darbhanga, in order to decide whether there is need for a new Rent Law in this division."

Again, the provisions relating to compensation for disturbance which were inserted in the Bill of 1885 for the protection of tenants from the so-called arbitrary evictions were universally condemned. If they had been subjected to evictions, such an opposition to a provision meant for a check to eviction could not have been raised. Are these tenants in a worse position than their brothers in khas mehals? On the contrary, their position is infinitely superior. The opinions given by the officers of Government and other independent persons on the Bill of 1883 do not establish the necessity of legislation for this class of tenants. Of course if the Government wants to give rights of occupancy to any and every person who happens to take settlement of an inch of land, it is at liberty to do so. But why not say this in plain terms; why have recourse to such complicated devices as the provisions relating to compensation for disturbance or judicial lease are in order to create rights of occupancy? The whole of this chapter teems with provisions which are serious encroachments on the rights of the zemindars.

*Sec. 60, sub-section 7.*—The words "unless he has acquired a right of occupancy" should be omitted. The growth of the right of occupancy should be in abeyance during the period of five years prescribed in the section. Under the Irish Land Law Act, an ordinary tenant holding for 60 years under a judicial lease continues to be a tenant from year to year on the expiration of his term. It would be impracticable on the part of the zemindar to eject the tenant if occupancy right is allowed to accrue during the period prescribed in the section.

## CHAPTER VIII.

It is now generally admitted that the rule of presumption laid down in section 4 of the present law and reproduced in Chapter VIII of the Bill works hard on the zemindar. It is now too late to insist on its total abolition, but it should be modified on the lines suggested by Mr. Reynolds. Most of the judicial officers of this district are of opinion that the presumption works very hard on the zemindars, who find it in many instances very difficult to rebut it, and that in the majority of enhancement suits the plea of 20 years' uniform payment is falsely set up by the tenant.

*Section 64, sub-section (3).*—With regard to section 64 (3) it is necessary to point out that as the presumption of 20 years is applicable to produce rents, it is worthy of consideration what the effect of commutation (section 58) at the instance of the tenant or at the instance of the landlord would be on the power of the latter to seek enhancement in the future. A tenant applies for commutation, but the zemindar is not willing that the produce rent should be commuted in money, the prayer is however granted; when produce rent was paid, the landlord used to benefit to the extent of his share by an increase in produce as well as by an increase in prices; the commutation having been made on the basis of prices and produce as obtaining in the past, would the landlord suffer for deterioration in the value of money, through the commuted rent being deemed to be non-enhanceable in future, or would an enhancement be permitted? If the produce rent had not been commuted, the landlord would have reaped the benefit of increased prices and increased produce. He should not lose this benefit because the grain rent has undergone commutation in money.

### Payment of rent.

*Section 67 (2, 3, 4).*—Provision should be made for the exemption of such areas from the operation of these rules, where the ryots and the landlords jointly apply to be so exampted. In the majority of cases the parties find it to their own convenience to settle the instalments in which rent is to be paid, and any inflexible rule framed by Government may work great hardship in such cases.

### Receipts and Accounts.

These rules will tell hard upon petty landed proprietors. It is absurd to expect that a poor and ignorant Brahmin owing 25 bighas of brohmotter land would be able to comply with the provisions of these sections.

*Section 72 (3).*—This sub-section should be omitted. If a landlord does not keep a counterfoil, it will be to his own injury when a ryot pleads payment in a rent suit and produces fabricated receipt in support of his plea. This will be sufficient punishment for the zemindar, and he need not be fined at all.

### Deposit of Rent.

*Section 73.*—The provisions of this section will encourage hostile tenants to harass their landlords with frequent deposits, even where there exists no real ground for making such deposits. The ryot should be required to put in a verified application for making deposit so that he may be prosecuted if the statements made in the application prove false.

*Sections 81 & 82.*—The provisions of these sections create innumerable difficulties in the way of realizing rents in kind. Of course when a new provision is made, people will not be found wanting to take advantage of it. But the question is whether there is any necessity for these provisions. As far as this division is concerned, disputes as to bhowli rent are not frequent. Landlords and tenants settle these matters among themselves. If any difference arises, of course they go to the Civil Court; but the present provisions do not pretend to make a final settlement of such disputes. On the contrary, it is seen that under section 82 (5) the Collector may refer any such dispute to a Civil Court. Then why all this expense for carrying out the provisions of sections 81 & 82? Let the matter be litigated once for all in the Civil Court; and if necessity arises, the Civil Court may send an Amin to make a division, or depute any other person to carry out its order. As to apprehension of disputes, it may be interesting here to cite the following from the report of Mr. Kemble, Collector of Gya, dated 20th January 1881. "As regards dispute about division of crop, no one has ever raised that objection to me. Disputes arise, no doubt, but I do not think they are so numerous or of so serious a nature as to be made a reason for changing a system."

*Section 83.*—A penal clause should be added if the tenant removes any portion of the crop before actual division. *Sub-section (4)* is not sufficient for the protection of the interest of the landlord.

## CHAPTER IX.

### Improvements.

Regard being had to the fact that all substantive improvements are made by the landlords the sections relating to improvements are not necessary. But as giving encouragement to tenants to undertake works of improvement, the Committee would retain the sections, but with modifications. The non-occupancy tenants who have no permanent interest in the soil should not in any case be allowed to make improvements without the permission of landlord. The occupancy tenants and tenants with fixed rates should, when they are desirous of making any improvement, apply to the landlord for permission to make such improvement. In case permission is not given, the tenant may apply to the Collector or any officer to be appointed by Government in this behalf for such a permission. The Collector or such other officer on receipt of the application shall call upon the landlord to show cause within a certain period why such a permission should not be given. If the landlord on the appointed day appears and shows sufficient cause why permission should not be given; the Collector or such other officer shall refuse permission; but if on that date the landlord fails to appear, or after appearing fails to shew any sufficient cause, the Collector or such other officer may grant permission to the tenant to make improvement. But in every case, whether permission is given by the Collector or by the landlord, the tenant should be required to furnish a substantial security to the landlord for any injury or damage that might happen to the land. For instance, the tenant in a fit of zeal might set to constructing a water-course or embankment, or digging a tank or well. After a short time his zeal subsides, or he happens to be short of funds, and he leaves the work incomplete, thus permanently injuring the land. Such contingencies, the Committee think, should be provided for, and the provision given in the Bill empowering the Collector to decide whether a particular work is improvement or not is not sufficient for the purpose stated above.

In this district the principal works of improvement are artificial water-courses and embankments, and these are invariably constructed by the zemindars, the ryots neither having the means nor inclination to undertake the same.

*Section 87 (2)d*.—When a ryot takes settlement of a land, it is but natural that he would, for the purposes of cultivation, reclaim any portion which was lying waste, or clear the jungle, or construct fences for security of the crops; and to give him compensation for this would simply be absurd—he might as well claim compensation for ploughing or watering his fields.

*Section 87 (2)f*.—How is dwelling-house an improvement? It does not fall within the list of improvements given in the North-Western Provinces Rent Act. Under the present law as interpreted in a long series of decisions of the High Court, a tenant cannot build without the permission of his landlord; but the Bill gives even the non-occupancy tenant power to build pucca houses without the permission of his landlord. This is highly unjust, and will entail loss on the zemindar, who might have given a building lease of that land to another person at a more favourable rate.

*Section 91 (1)*.—Although the word "may" occurs in this sub-section, this section read along with section 46, clause (*a*), makes it virtually compulsory on the landlords to register improvements. It would be very hard upon zemindars if they are required to register improvements made long before the commencement of this Act.

### Abandonment.

*Section 96 (3)*.—This section leaves the zemindar completely at the mercy of his tenants. The tenant may go away at any time he chooses; may again come back to claim possession. This of course will be harassing the zemindar and entailing loss upon him. The latter part of the sub-section will be hardly sufficient to protect his interests. Besides the payment of compensation, the recusant tenant should invariably be required to pay a certain sum of money as fine to his zemindar for re-entry, if the section should stand.

### Measurement.

*Section 99*.—Why should not the landlord be entitled to measure his own lands except once in ten years? This is certainly unjust. Occasions may arise when it would be necessary for him to measure the land; for instance, when a neighbouring proprietor encroaches upon his land, or that his own tenants claim more land than what has been originally settled with them. In such cases it may be necessary to measure the lands.

*Section 101 (3)*.—Provision should be made to enable the zemindar to file any objection to the rules, and move the Local Government for the alteration or amendment of any such rules.

### Managers.

*Sections 102-109*.—If the co-owners cannot agree among themselves they have remedy by applying for partition. It would be unjust to appoint a manager at the instance of one or more co-owners against the wishes of the other co owners. The latter would be but too glad to manage their own shares. These sections interfere with the right of enjoyment of property. If any difficulty is felt by the tenant in the way of paying rent, he may avail himself of the sections relating to deposit of rent. So there is no necessity for these sections. There would be constant friction between the manager and the co-owner or co-owners against whose wish he may be appointed, and the estate would after all go to ruin.

## CHAPTER X.

### Record-of-right and settlement of rent.

The Committee would remark that there can be no reasonable objection to the provisions relating to the preparation of record-of-rights, provided the expenses be borne by the applicant, or applicants, at whose instance the record is to be prepared, or by the State. As to the particulars given in section 3, the Committee would suggest that in cases of tenure-holders, the description of the tenure might be added. For instance, whether it is a *mocurruree*, *putni*, or any other kind of tenure, or whether it is a tenure so created by reason of an occupancy tenant subletting more than half of his holding; also whether any improvement, as defined in the Bill, has been made on the land or not should be stated, and if any, by whom. As to the procedure laid down in case of disputed entries, it is in the opinion of the Committee rather a complicated and expensive one. It will necessitate on the part of the Government the maintenance of separate establishment, and add to the cost of the parties. All this might be prevented if power is given to the parties, in case of disputed entries, to bring a suit in the Civil Court for the rectification of any entry which they think to be wrong. The Civil Court have in many cases already to decide on many of the particulars stated in section 3; and in cases where personal investigation is necessary, the Court may send an Amin. The record should be amended according to the decree of the Civil Court, or the decree finally passed on appeal, where such appeal is preferred.

The provisions relating to settlement of rent are quite unnecessary. They will in many cases encourage litigation. The revenue officers are vested with large powers. It would

appear that under sub section 3, section 118, a revenue officer can lower existing rent. This is unjust and will tell hard on the zemindars. When the settlement officer comes to a particular area to settle the rents, the ryots are surely to apply to him to get their rents lowered, and this would lead to friction with the zemindars, who on their part would try to get the rent enhanced. It is unsafe to vest executo officers with judicial authority in such matters, especially where there are already provisions in the Bill for enhancement and abatement of rent. The Committee strongly disapprove of this dual procedure which would give concurrent jurisdiction to the revenue officers with the Civil Court in such important matters as settlement of rent, and would ultimately increase litigation and embitter the feelings of the zemindars towards their tenants and *vice versâ*.

*Section 118, sub-section 3.*—As has been remarked above, the revenue officer can lower existing rent if he thinks the lower rate to be fair and equitable. This is, of course, arming the revenue officer with extraordinary powers. What serious loss it would be to the zemindars if the revenue officer were to go on reducing the rents of entire villages.

Here also, instead of maintaining special Judges, power may be given to parties to get the order of the settlement officer amended, altered, or set aside by the Civil Court.

## CHAPTER XI.

The provisions relating to table of rates have been declared by the Local Governmant in its letter dated 27th September 1883 to be unworkable. This chapter should be omitted from the Bill.

## CHAPTER XII.

This chapter contains provisions revolutionary in their nature, inasmuch as they materially affect the proprietary rights of the zemindars. The plea for enacting these provisions set forth in the Statement of Objects and Reasons, appended to the Bill of 1883, is as follows:—"Bearing this in mind, and having regard to the efforts made by landlords in some parts of the country, under the existing law to get into their own hands as large as amount of the ryotty land as possible and convert it into khamar land, it has been thought necessary to make it clear by the definition that the existing stock of khamar land cannot hereafter be increased, and further to enact (section 6) that all land which is not khamar land shall be deemed to be ryotty land, and that all lands shall be presumed to be ryotty land until the contrary is proved.

"In Behar, owing to large extent of the khamar or as it is there termed 'zeraat' land, and the persistent efforts made by the landlords and their lessees to increase its extent, the question is one of cardinal importance."

Two things are alleged in the above extract:—

(1) In some parts of the country, efforts are made by landlords to convert ryotty land into khamar land.

(2) That this practice largely obtains with the Behar zemindars.

Now as regards the first allegation, it is admitted that only in some parts of the country the practice complained of prevails. Then why make the chapter general in its application? The Bill proposes to legislate on the lines suggested by the Rent Commission, but no such provisions occur in the Bill framed by them. Chapter XII lays down some special provisions for Behar; but even that chapter does not lay down any distinction, or make any presumption, as is found in chapter XII of the Revised Tenancy Bill. After giving full consideration to the suggestions of the Behar Rent Committee, the Rent Commission in paragraph 156 of their report thus observe:—"It appears to us that the most important objects of legislation for Behar are to protect the ryots from illegal distraint, illegal enhancement, and illegal cesses, to enable them to maintain their rights of occupancy, and to suppress various modes of oppression incident to the collection of rent in kind. * * * We think that special provisions for Behar contained in chapter xii will, taken with the other provisions of the Bill, effectuate these objects as far as they can be effectuated by legislation." Had there been a dominant practice on the part of Behar zemindars to convert ryotty land into khamar land, it would not have escaped the observation of the Rent Commission. But there is no device in their Bill to prevent a zemindar from lawfully increasing the stock of his khamar land. The definition they give of ziraat land (*vide* section 81 of their Bill) certainly does not go that length. These revolutionary principles were first introduced by the Bengal Government in its Bill submitted to the Government of India (*vide* section 19 expl. iv. clause (f) proviso and section 75 of the Bill). In justification of the introduction of these principles, the Lieutenant-Governor, in paragraph 25 of his letter, dated 27th July 1881, submitting the Bill to the Supreme Government, thus observes:—"Now there are in many estates lands which are recognised as the proprietor's private lands known as khamar, nij-jote, or sir land in Bengal, and as zeraat in Behar. In these lands, under the present rent law, a ryot may not acquire a right of occupancy so long as the zemindar chooses to let him the land only for a term, or year by year. In such lands the zemindar can always prevent the accrual of rights of occupancy without making any special stipulations against this. Naturally, therefore, the zemindar would be glad to have as much of land in his estate as possible classed as khamar or private land. But there is nothing which village feeling resents more bitterly than the absorption of ryotty lands into khamar. So generally is the custom of

the country recognised in respect of such lands, that if a zemindar wants a plot of land in the occupation of a ryot for a garden or a house, he takes a formal sub-lease of it from the occupant, or purchases the right of such occupant, and enters himself in village papers as the ryot (not as zemindar) in respect of such plot or ground. The bold assertion now-a-days of high English notions of proprietary rights makes it, however, desirable to throw the shield of positive law over the ryotty lands of the village, and this has been done in the present Bill." Now this extract goes to show that the zemindar *would be glad* to convert ryotty land into khamar if he could. But any such act is bitterly resented by the people; and so jealous are they of their rights that when the zemindar wants a plot of ground for his house or garden he has to take settlement of it, or purchase it from the occupant, and then to enter himself in the village paper as *ryot*, not zemindar; and that the assertion of high English notions of proprietary rights has rendered the introduction of such a measure necessary. This testimony is of the greatest value, as it shows that as a matter of fact the zemindars do not convert ryotty lands into khamar, but that the provisions are laid down, in order to baffle any such future attempts on their part. Besides in the minutes written by the officials of the Patna Division which are published in the Report of the Government of Bengal on the proposed amendment of the law of landlord and tenant in that province with a Revised Bill, Volume II, pages 228-68, no such allegation is made against the Behar landlords. Thus it has satisfactorily been shown that the justification for chapter xii as given in the Statement of Object and Reason wholly fails. There may be some instances of unlawful ejectment and absorption of the holding into *seeraat*, but unless the practice were to be very general extending over all the districts, it would not be worth the while of the legislature to lay down any special provisions on the subject. This Division is classed with Behar for certain purposes, but the charge of changing and chopping the holdings of ryots and their conversion into khamar lands is not applicable to it.

The Revised Tenancy Bill has omitted some of the objectionable provisions of chapter ii of the Bill of 1883, but it retains in a modified shape the presumption laid down in section 6 of that Bill. Section 138 (2) of the Revised Tenancy Bill lays down that the Revenue officer "shall presume that land is not a proprietor's private land until the contrary is shown." Now it will be necessary to refer again to the Bengal Government letter dated 27th July 1881 from which extracts have been already cited. In paragraph 25 of that letter, His Honour thus observes on the origin of khamar land:—'*Khamar* was the waste unreclaimed or surplus land of the village which the zemindar was permitted to cultivate by contract for his own advantage during the term of his revenue engagement with Government, but which, as cultivators settled on it, became part of the ryotty land of the village. * * * There is no doubt that most of what is now admittedly ryotty land was originally khamar." So it is admitted that all lands were originally the zemindar's khamar or private land, although there is no authority for holding that the moment a ryot takes settlement of such land, it turns ryotty. Next it may be observed that sections 52 of Regulation VIII of 1793 gives absolute power to the zemindar to dispose of the "remaining land" in any way he pleases, meaning lands "remaining over and above the land held by the mokurraridars, istemraridars and dependent talookdars." Lastly, it should be seen what view the Government of India took in 1815 of the powers of zemindars in respect of such lands. In Revenue letter dated 7th October 1815, addressed to the Court of Directors, this observation occurs:—"In like manner, the zemindar in this country, in holding his estate subject to certain restrictions with respect to the right of the resident ryots, does not the less enjoy the power of managing those lands on which no resident ryots are established *in any mode he may judge proper*, of collecting the rents of the whole through what channel he may deem best suited to his convenience, of providing for the cultivation of waste lands, of improving the general condition of the estate, and finally of enjoying the surplus revenue, whatever it may be, after paying the regulated assessment to Government." Now if the Lieutenant-Governor admitted in 1883 that all lands were originally the private lands of zemindars, if the Government of India conceded in 1815 the absolute power of the zemindars over all lands not held by resident ryots, if the Permanent Settlement Code of 1793 gave absolute power of disposal to the zemindars as to these lands, why should the Revenue Officer presume that such lands are not the private lands of the zemindars? Lastly, the definition given in section 138 (1) of khamar lands is opposed, as is shown from the foregoing extracts, to the customary and settled law of the land. If the zemindar is the *malik* of all such lands situate within the zemindary, why should cultivation by him for 12 years be required to give them the character of khamar lands?

## CHAPTER XIII.

### Distraint.

The committee think that there is no necessity for changing the present law on distraint There are sufficient safeguards in the present law against any abuse of the power of distraint; if they are held not sufficient, more stringent rules can be made. The procedure laid down in the Bill is a cumbrous one and partakes of the nature of a regular suit. First, an application for distraint is to be made, it is to be signed and verified as a plaint, the applicant is to file documentary evidence and is to be examined. All this is preliminary to the admission of the application This lengthy procedure would by its delay defeat the object of distraint. The Rent Commission have not given facts and figures to show in how many instances powers of distraint

have been abused. The Behar Rent Committee originally proposed the abolition of the law of distraint, and it may be interesting to state under what circumstances they did it. Some members were for simplifying and amending the law, but Mr. Gibbon proposed that the law of distraint be entirely abolished. The question put to the vote was whether in case a summary procedure for realisation of rent be extended to Behar, the power of distraint should altogether be abolished; and the majority were for abolition. So it was distinctly understood that a summary procedure was going to be introduced. Now in the Bill there is no summary procedure, and yet the law of distraint is practically abolished as the fetters and restraints imposed upon it would make it altogether useless.

## CHAPTER XIV.

### Judicial Procedure.

The Committee think that in suits for arrears of rent against ryots other than occupancy tenants, the zemindars should be allowed to sue any number of tenants residing in the same mouzah by means of a single plaint. Further, the Committee would suggest that instead of making it compulsory on the landlord to grant receipts in the form prescribed in section 70 and to keep counterfoils of them, the granting of receipts and keeping of counterfoils in the form prescribed ought to be permissive, and an inducement ought to be held out to landlords to have more frequent recourse to registered kabulyats and grant counterfoil receipts, by allowing them the advantage of obtaining decrees on the very day of filling the plaint on *primâ facie* proof that the balance is due by production of the kabulyat and counterfoil receipts, and by examining one or two persons in support of the claim, and on proof that before the suit was brought a notice had been issued on the tenant, that the arrears were claimed 15 days before the institution of the suit, and that no reply contesting the claim had been received. If, however, in such cases the tenant should contest the claim by the issue of a counter-notice, the Court instead of decreeing the claim should issue a short-date summons on the defendant and decide the case on the date fixed in the summons.

*Section 168.*—There should always be an appeal from the judgment of the Munsiff, whatever may be the value of the suit.

*Section 170 (1).*—"Reasonable time"—the time should be specified.

*Section 171 (b).*—Why should interest be paid on the value? The tenant is ejected through no fault on the part of his landlord.

*Section 172 (2).*—Express provision should be made in cases where the amount payable by the tenant to the landlord exceeds the amount payable by the landlord to the tenant. In such cases the court should pass a decrée for the excess amount against the tenant, and it should be laid down that unless the amount decreed be paid at once, the tenant should not be able to enjoy any of the benefits promised under section 171, clauses (*a*) and (*b*), but be forthwith ejected. At the same time such a provision should not be a bar to the landlord to his recovering the amount decreed by execution or any other means provided by law for the realisation of decrees.

## CHAPTER XV.

This chapter contains a most cumbrous and dilatory procedure, which will interfere with the speedy realisation of rent-decrees. The tenure should be sold free of all encumbrances except those that are protected. There is no reason for any change in the existing law on the subject.

*Section 186 (c).*—Suppose the tenant under section 171 (*d*) remains in possession of the land for more than six months after the decree, any rent due from him for this period should not be affected by the present clause.

## CHAPTER XVII.

### Contract and Custom.

This chapter proposes to fetter freedom of contract. This is most unjust and unnecessary. By the Contract Act every person of age and of a sound mind is competent to contract. There is no reason why a ryot should be disqualified from contracting. Granting that he is ignorant of his rights, and if left to his own free will may do what is not proper for his interest, still it is not a case for the legislature to interfere; for if the legislature were to interfere in cases of this nature, where would it stop? It would have to dog the steps of every private individual and see that he does nothing against his own interest. The remedy for this state of things is diffusion of education, and not legislative interference. But is it true that the ryots are so ignorant that by contract they are made to forego their occupancy rights? Certainly not. The late Hon'ble Kristo Das Paul in his speech on the occasion of the debate on the Tenancy Bill thus observes:—"The 12 years' rule, under Act X of 1859, has practically given fixity of tenure to the bulk of agricultural population of this country. Some estimate it at 90 per cent. &c. In Behar, too, though the ryot does not fully appreciate the right, the right is practically enjoyed by the ryot, as appears from the report of Mr. Finucane."

*Section 214.*—The tenures called *Sarabadi* and *Husthoodi* which exist in some parts of this district are allied to *Hal Hasili* and *Uthundi* tenures. The characteristic of these tenures is want of fixity, inasmuch as both land and rent vary every year. Rent is paid per crop at specified rates on the land that yields a harvest, and in some parts a deduction is allowed at certain percentage on the area measured in favour of the tenant. Every year, or rather every harvest, measurement is made, the crop grown is noted down in the khusra paper, and is then transferred on the rent-roll, and rent is charged at rates which exist in the village for the kind of crop which is cultivated. In such cases it is not possible to ascertain the quantity of land or the year's rent which a ryot has to pay until the year is over; and in face of the existence of these tenures, it is hard to see the propriety of the provisions occurring in section 70, which make it imperative on landholders to grant receipts in the form prescribed.

*Section 216.*—Leaving the incidents of homestead tenures to be governed by custom is a wise provision. The custom relating to such tenancies is, so far as this district is concerned, clear and well-defined, and it is hardly possible that any confusion or dispute can arise regarding the same.

*Section 221.*—The word "landlord" used in this section should expressly include a manager appointed under section 104.

*Section 222.*—The provisions contained in section 222 would work with great hardship on shareholding landlords. At present they can sue separately and do all other acts separately, provided the collection of their rent is separate from the other shareholders. The proposed section would work a revolution in the management of coparcenary villages. The result would be a complete dead-lock of work, as it would not be easy for all the shareholders to join in the appointment of a common agent. The existing law as explained in the decisions of the High Court should not be changed.

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No. 2085-1075 L.R., dated 10th December 1884.

From—H. H. RISLEY, Esq., Officiating Under-Secretary to the Government of Bengal,

To—The Secretary to the Government of India, LEGISLATIVE DEPARTMENT.

In continuation of my letter No. 2013-1041 L.R., dated 4th December, 1884, I am directed to submit, for the consideration of the Government of India, the accompanying papers noted on the margin* containing further opinions on a pamphlet by Baboo Mohini Mohan Roy on the procedure sections of the Bengal Tenancy Bill.

* Letter, dated 3rd December, 1884, from the Additional Judge of Bhagulpore.
Letter No. 1200, dated 1st December, 1884, from the Superintendent and Remembrancer of Legal Affairs.

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Dated Bhagulpore, the 3rd December 1884.

From—BABOO AMRITA LAL CHATTERJEE, Additional Judge of Bhagulpore,

To—The Secretary to the Government of Bengal, Revenue Department.

With reference to your letter No. 2431T—R (Land Revenue), forwarding to me copy of a pamphlet by Baboo Mohini Mohan Roy on the procedure sections of the Bengal Tenancy Bill for opinion, I beg most respectfully to submit the following observations.

## PART I.

I fully agree with Baboo Mohini Mohan in the general observations which he has made regarding the shortcomings of the summary procedure, and the risk which attends the service of the notice of sale, if such service is left in the hands of the proprietor. It would certainly be better if all questions arising out of such sales could be finally decided between all the parties concerned by a competent and efficient civil court. For certain purposes the Court of the Subordinate Judge of the district would very well do; but I doubt much if the Court of the Subordinate Judge, situate at the sudder station of a district, would be the one most convenient to the parties if all descriptions of tenures of a permanent character were brought within section 194 of the Bill; for tenures of a permanent character are not invariably in all cases large tenures yielding large profits. There are many small tenures of a permanent character situate in the interior of a district, the profits arising out of which are too small to attract the notice of purchasers residing at a distance from the places where the tenures are situate; and if the sales of such tenures were invariably to be held at the sudder station, purchasers from the locality where the tenure are situate, and who are likely to know the value and nature of the properties, would seldom think of attending such sales in consequence of the cost and trouble attended upon a distant journey. This would necessarily affect the price which the tenures would fetch at the sales, to the prejudice alike of the landlords and of the defaulting tenure-holders.

The Court of the Subordinate Judge located at the sudder station of the district will not, in my humble opinion, suit the convenience of the parties in cases of small tenures situate beyond the limits of the local jurisdiction of the sudder munsifee of the district.

If all small tenures of a permanent character be intended to be brought within section 194 of the Bill, the best course would be to select some of our most efficient munsifs, and to appoint them as rent-munsifs in the interior of a district, and to vest them with powers to act under this section, where the amount of arrears due in respect of the tenure is below a certain amount.

It looks very well on paper when it is said that questions arising in connection with the sale of tenures can be finally decided, once for all, when proceedings are commenced before a civil court. Generally speaking summary procedure is defective, only because the investigation allowed under it is short and its scope narrow. I do not think that it is defective because the investigation is conducted by a Collector, and not by a civil court. Summary investigations from their very nature will be defective, whether they are conducted by a civil court or by a Collector. The investigation to be satisfactory must occupy time and embrace all the necessary points. I have some doubts on the point whether the procedure can be short and at the same time satisfactory. The writer sees his difficulty and tries to avoid it.

In section 8 of the proposed draft, the writer says that the court, on receiving a written statement from the tenure-holder, shall appoint an early day for hearing, and try and determine the issues on the appointed day; but that no sale shall be stayed by reason of the pendency of such trial, unless the tenure-holder deposit in court the amount of the landlord's demand.

I submit that the last clause is unfair to the tenure-holder. I do not see why in equity he should be compelled to deposit the amount of the landlord's demand before the sale is stopped, unless the landlord's demand is proved to be correct. The procedure proposed is here summary, and is therefore unsatisfactory.

Now, supposing that the tenure-holder is unable to deposit the amount of the landlord's demand, and, in consequence, the tenure is sold, and the trial of the issues takes more than 30 days after the date of the sale, but subsequently it is decided that a portion of the arrears claimed is due, and that the remainder is not justly due to the landlord—what is the remedy proposed? So far as I can see, none, for the last paragraph of that section provides that such decision will not interfere with, or affect the sale of, the tenure.

It is quite possible that a small amount of the arrears claimed is due, and that the tenure-holder was, either under a mistake of law or of fact, *bonâ fide* under the impression that no portion of the arrears claimed was due. Is it either fair or equitable to the tenure-holders that the sale should not, under these circumstances, be cancelled if the tenure-holder pays in the amount?

Even if it were to be enacted that the sale would, under such circumstances, be liable to cancelment, would not the risk of the sale being liable to cancelment enter into the calculation of the intending purchasers in regulating their bids? Would not that circumstance tend to lower the price which the sale would fetch?

If one wants to do away with the summary procedure altogether, he must not bring it in when it would suit the convenience of the landlord and affect prejudicially the tenure-holder.

Although the writer calls the initiatory application an application only, it is virtually a plaint in a regular suit, and the question arising in that suit ought to be decided at least by one court before the sale could take place. I therefore strongly object to the last sentence of paragraph 1 of section 8 of the draft.

I have no objection to the proposal for registration of tenures in a civil court.

*Section 13.*—Five per cent. appears to be too high. All that the purchasers can reasonably claim as compensation is a fair rate of interest. When the tenure-holder or any other person is required to pay within 30 days from the date of sale, 1 per cent. will be a fair compensation to the purchaser. If the landlord and the purchaser be both guilty of fraud, I do not see why a suit for cancelment of sale will not lie.

*Section 17 of the draft.*—Any person interested in the tenure will not, however, be precluded from bringing a regular suit for compensation within the time prescribed by the Limitation Act. The questions involved in such suits are not unoften complicated, and it may very well be that in many cases the period of two months is not a sufficient time for the collecting of materials necessary for properly conducting such cases.

If, however, such person does apply under this section, and his application is tried on the merits, it is proper that he should not be allowed to bring a fresh regular suit for the same subject-matter.

*Section 207* of the Bill must be retained. It is not clear why this section has been omitted from the draft.

I think it proper to observe here that in all cases of arrears of rent due in respect of a transferable tenure, it should be incumbent upon the landlord to proceed against the tenure itself, in the first instance, if such tenure is in the possession of the judgment-debtor.

The draft is in a crude form. If it is approved, it will have to undergo some amendments in its language and details.

The draft does not say what course will have to be followed if the sale of the tenure does not satisfy the landlord's demand. Some provisions are necessary to enable the landlord to put up the defaulter's other properties to sale.

## PART II.

The writer calls the application for enforcing the claim of the landlord for rent in certain cases "an application as in an execution proceeding," and thinks that by so giving it a name the procedure will be shortened. My impression is that suits for arrears of rent, in which the annual jumma is admitted or proved by former decrees, are, as a rule, decided within a very short time, and that for such suits no special procedure is needed. I would not, however, quarrel with the writer, if he would be satisfied with calling the plaint an application for execution.

Would the procedure proposed avail the landlord where a question of abatement of rent is raised by the defendant on the ground of diluvion or the like? The decision of questions like these will necessarily take time, and the application for execution will not enable the landlord to put up the ryot's property to sale before these questions are decided.

I have no objection to the proposal to make all rent suits triable by the Court of the Subordinate Judge exclusively, except this, that the cases are numerous in which the amount claimed is small, and which are not contentious, and it will be sheer waste of time of a highly paid officer like the Subordinate Judge if such cases be made exclusively triable by him. Again, the percentage of appeals from the decisions of munsifs, in suits for arrears of rent, where no question of the amount of jumma is involved, is, I believe, very small. I think that, under such circumstances, all suits for rent should not be made exclusively triable by the Subordinate Judge In my humble opinion, the best course would be to select some of the most efficient munsifs to try suits for rent falling within the pecuniary jurisdiction of the munsif.

*Chapter XV of the Revised Bill.*—There can be no serious objection to extending the sections contained in the special procedure to execution sales for arrears of rent due by ryots in respect of transferable holdings, so far as they can be applied. But I do not think that any sufficient ground has been made out for omitting the provisions regarding registered and notified encumbrances. The procedure is, no doubt, cumbrous in a certain degree; but the provisions contained in the sections, which the writer of the pamphlet wishes to omit, are intended to serve a useful end, and I submit they ought not to be abandoned simply with the view of shortening the procedure.

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No. 1200, dated Calcutta, the 1st December, 1884.

From—C. B. GARRETT, Esq., Officiating Superintendent and Remembrancer of Legal Affairs,

To—The Secretary to the Government of Bengal, Revenue Department.

Referring to your No. 2426T—R and No. 1662—908LR, dated respectively the 23rd October and 4th November 1884, regarding the Bengal Tenancy Bill, I have the honour to send the report therein called for.

2. Baboo Mohiny Mohan Roy's suggestions seem to me, on the whole, very good, and certainly approach to a successful solution of the extremely difficult problem of how to give the zemindars a simpler and cheaper means of realizing their rents from those tenants who can pay, and wont pay—facilities, which I think it is everywhere admitted, they ought to have without at the same time placing in the less reliable and scrupulous members of the class a weapon which they will certainly abuse to oppress and harass their tenants. The only thing, I fear, is that Baboo Mohiny Mohan Roy, whom I shall hereafter call the author, takes somewhat too roseate a view of the difficulties inseparable from the situation. The first 13 pages of the pamphlet are occupied with introductory matter. I propose shortly to make a few remarks on the matters dealt with therein.

3. I agree with the author in the remarks he makes about summary procedure. Summary procedure is, in my opinion, only an euphemism for a perfunctory and careless procedure. Every summary decision is, in general, pregnant with lengthened "regular" litigation, and such decisions generally serve only to embarrass suitors and add to the expenses of litigation. If, therefore, a system of registration of tenures is adopted, I trust that the officers appointed to carry it out will be invested with power to hear and decide finally all questions arising under it, and that none such will be open to be contested in any more formal suit.

4. I think also it is a good suggestion of the author that the system should be carried out by officers of the class of Subordinate Judges. It is obvious that, for some time at least, the introduction of a system of registration will lead to a very considerable increase of litigation, and will necessitate the employment of a large number of extra officers. It is, I think, highly desirable that these officers should have had a judicial training.

5. To entrust these duties to officers holding the position and drawing the salary of District Judges would be enormously expensive. In the Subordinate Judges we have an excellent judiciary, who command fully the confidence and respect of the people who are trained to very hard and careful work, and whose numbers might easily be enlarged by selection from the experienced munsifs of the new school.

6. Coming now to the details of the scheme set forth at page 13 *et seq.*, there are certainly some points on which I do not agree with the author. In the first place, it must be remembered that a summary sale for arrears is bringing up defaulting tenure-holders with a very round turn indeed. It would, I think, be a considerable hardship for a tenure-holder to feel that his tenure was liable to be put up to sale once in every three months.

7. It may be argued that this is the measure which the Government itself metes out to the zemindars, to which I can only reply thus—The zemindars in Bengal have got a very cheap bargain, far cheaper than most tenure-holders have; and that when people have got a very cheap bargain, they usually have to pay prompt cash. Instead, therefore, of permitting zemindars to apply for the sale of their undertenures once a quarter, I would propose that they should have this power of summary sale only when the rent for half a year was in arrear. As a matter of administrative convenience, I would allow such applications to be made in the first month of any quarter, but I would permit them only to be made when the zemindar could certify that not less than the rent of the last two preceding quarters was in arrear. Indeed, I think the author himself seems to feel that it is somewhat a hard case, for he says that practically no estate can be put up for sale more than twice in a year.

8. I do not quite follow the reasoning by which the author seeks to establish this proposition, for, inasmuch as such an application can be made in the first month of the quarter, an application may be made on the 1st Bysack. The estate might be lotted for sale on the 28th Sraban; but if the rents for the quarter, Bysack—Assar, were at all in arrear at the end of Assar, I see nothing to prevent the zemindars applying for sale on the 2nd or 3rd of Sraban, and getting it again lotted for sale on the 28th Kartick. If, therefore, before the 28th Sraban the tenure-holder had paid in everything due up to Bysack, he will still find his estate liable for sale on the 28th Kartick. This might be made a means of greatly harassing any weak tenure-holder.

9. I also deprecate the idea of extending the special and summary remedy to demands other than those for the current year. If you make it possible for a zemindar to allow a tenure-holder to get into his debt for two or three years' arrears of rent, and then suddenly to launch the claim on him with a power to sell up the tenure, if the tenure-holder cannot discharge the debt in three months, you permit him to store up a thunderbolt to crush the tenure-holder with. I would therefore strictly limit such special remedies to the recovery of the balances of the current year. It will probably be argued that by this means the zemindar will be forced into litigation for every trifling arrear, and that you will debar him from giving time and showing mercy to the tenure-holder if the latter be in pressure or difficulty. As regards the first argument, I would reply that if the zemindar did put the tenure up for sale for a trifling arrear, he would be very foolish, and the tenure-holder would probably find no difficulty in raising the money. To the other argument, I would reply that tender mercies, which simply consist in giving the tenant time until he is hopelessly involved and then closing on him, are cruel.

10. When a tenant is becoming unable to pay his rent, it is far better that the zemindar should sell him up at once, unless the zemindar intends to see him through his difficulties, which, *ex hypothesi*, the zemindar will not do in his case.

11. As regards the stamp fee leviable upon such application, I think it certainly ought not to be fixed as low as 8 annas. In the first place, 8 annas is not an equivalent for the work to be done: in the next place because, if fixed so low, I fear it might soon grow to be a custom for tenure-holders not to pay unless such an application was made solely in order to acquire by payment into court independent proof that they had paid the rent due. I would recommend that the stamp fee should be fixed at one-eighth of that necessary for instituting a suit with a minimum of 8 annas, but no maximum.

12. *Section IV.*—I agree with the author that the service of notices should be made through the court, instead of, as at present, on the responsibility of the zemindar. I think, however, that such notices should be served at least six weeks before the sale day. If notice was not served until 20 days before the sale day, a tenure-holder might find it very difficult to raise the money to protect his tenure.

13. *Sections V, VI, and VII.*—I have nothing to say on these sections.

14. *Section VIII.*—If summary sales are to be permitted for more than the arrears of the current year, rather say the rent of one year in all, I should most strongly deprecate making it a condition precedent to contesting the zemindar's demand that the tenure-holder should deposit the amount of claim. If not more than the rent of a single year is thus permitted to be realized, I think there might often be cases in which such a condition should be insisted on, that is to say, cases in which the tenure-holder was plainly disputing the claim simply to gain time.

15. I do not think any hard-and-fast rule should be laid down on this point. I think the courts should always have a discretionary power to hear such an objection without requiring a deposit of the amount claimed.

16. *Sections IX, X, XI, and XII.*—These sections call for no particular remark.

17. *Section XIII.*—I approve of the principle of this section, which gives the tenure-holders a sort of *locus penetentiæ* in case he fails to pay the amount of the claim. It will also, as the author points out, enable tenure-holders to protect themselves from a ruinous sacrifice of their property by buying it back before the sale becomes absolute. I do not think, however, that there is any necessity for compelling the tenure-holders to deposit 5 per cent. on the purchase-money as compensation to the purchasee for the loss of his bargain: It is not much hardship on a purchasee if he is uncertain for 30 days whether he will get the estate or not, and practically I do not believe that such a condition would in any way deteriorate the value of the property; while, on the other hand, it would certainly be some hardship on the tenure-holder (who presumably would be a man in difficulty) to have to raise so much more on a tenure, perhaps already encumbered up to near its full value. I would propose therefore that the sale should be cancelled on repayment of the purchase-money, expenses, and interest on the whole at 6 per cent. per annum, and, in addition thereto, the payment of the zemindar's claim with expenses and interest subsequently accrued. Purchasers buying at such sales would understand that their titles were, so to speak, "ambulatory" for a month, and this once established it would have, I think, very little effect on the prices obtained at such sales. In one way I fear that this section may not work satisfactorily. Its provisions may have the effect, to some extent, of inducing dishonest people not to pay their rents even after an estate has been lotted for sale, trusting to being able to do so within the 30 days of grace.

18. *Sections XIV to XVI.*—No remarks.

19. I observe that the author entirely omits section 205. In a country where there is so much fraudulent and collusive litigation as in Bengal, it would not, I think, be at all safe not to provide some possible remedy for third parties injured by sales collusively brought about.

20. *Section XVII.*—This section is a slight modification of section 206 of the recent Bill. So far as it goes, it only substitutes an application for the suit permitted by the section. I think it is certainly doubtful whether it is any advantage to the sub-tenure-holder to have his remedy limited to the sale proceeds, and I do not think he will get his remedy more quickly. Whether you call it an application or suit, it must be regularly tried out, and the order of the first court made open to appeal. All things considered, I should prefer to retain section 206 unaltered.

21. I now come to deal with the sections laying down rules for the registration of tenures. Registration of tenures is evidently the keystone of the proposed procedure. The author himself proposes to make it applicable only to talooks which are registered, and if the proposed powers of summary sale were given without this restriction, it would be giving a most dangerous power to the zemindars.

22. I agree with the author that the register he proposes will be sufficient for the purposes of this chapter. But the author has again omitted to provide any method for the investigation of the claims of third parties. It is, I think, a very appreciable danger that fictitious tenures will be registered collusively, and if there is no means provided by which third parties affected by such leases could come in and contest their genuineness, I fear a great many fraudulent and collusive leases would get registered, and much false evidence created, which it would be necessary for the persons affected to institute proceedings to set aside.

23. Especially I think would this be the case in the registration of leases and counterparts. Moreover, the author seems to suggest, at the top of page 24, that all disputed leases and tenures should be excluded from registration. The result seems likely to be that only those tenures will be registered which it is least necessary should be registered, namely, those in which the lessor and lessee are acting in unison, and in which there is consequently little reason to suppose that there will be any willing default in the payment of the rent.

24. It does not seem to me advantageous to introduce a system of partial registration, and if we are to attempt the Herculean task of of registering all tenures and all leases, we ought, I think, to make the registration complete, so that all questions arising with regard to registration, whether disputes between the ostensible parties to the registration, or raised by third parties, may be decided before the tenure or lease is brought upon the register. This will of course make registration a much more troublesome matter, but I see no advantage in an incomplete system of registration, which shall register only documents either admitted, or such that their genuineness cannot be contested, and shall exclude from registration documents about which there is contention.

25. *Section XXIII.*—This section makes it a condition precedent that the parent estate should be registered under the Land Registration Act. Of course in the case of a landlord, if he does not register under Act VI (B. C.) of 1876, he has only himself to blame if he is unable to register his undertenures: the remedy lies in his own hands, but what remedy has the under-tenure-holder, who desires to have his tenure registered against his landlord's wishes in a case where the landlord has not had his own name registered under Bengal Council Act VI of 1876? The question is perhaps of less importance, as I fancy tenure-holders will be forward to have their tenures registered.

26. *Sections XXVI and XXVII.*—I must say that these sections appear to me somewhat one-sided, and wholly in favour of the zemindars. Suppose a zemindar applies for the registration of a tenure, alleging it to be of a specified description. It may be that the tenure-holder may have the most valid objections to the description of the tenure as given by the zemindar, and in fact it may be impossible to permit it to be registered without a contest, nevertheless all the court will enquire will be—

1st, as to the admissibility of the tenure to registration;
2nd, as to the amount of annual rent payable thereupon;
3rd, instalments in which the rent is payable.

Now it is quite possible that on these points there may be no substantial contest, and the consequence will be that the tenure will be registered as a tenure saleable summarily, although the tenure-holder may, with the greatest justice, contest the correctness of the landlord's description in every point except these. This would, I think, be extremely unfair to the tenure-holder. I think the only fair course under such circumstances would be, when there was contention, either not to register the tenure until the dispute was decided, or to register it provisionally on the terms admitted by the non-applicant without prejudice to the applicant's rights to prove the tenure to be of a different character.

27. I now come to discuss the second part of the author's proposals—the procedure to be adopted for a more speedy realization of rent from ryots. The author's proposals seem modelled on the measures which he has already suggested in respect of tenures, substituting for registration a decree of court. The proposals are in themselves, I think, good and practical, that is to say, they would secure the object they aim at, and they are fair enough if they can be fairly worked. There appears to me, however, to be two very serious objections to extending this summary process to the case of ordinary ryots. The first is the vast mass of litigation with which it will flood the courts. Every ryoti holding, before it can be brought under the summary process, must be made the subject of a suit; and as it will be very much to the interest of the zemindar to be able to put this summary remedy in force against the ryots, it is reasonable to suppose that every ryoti holding will soon be passed through the courts. In the next place, there is another objection, which I shall state roundly and without euphemism. It is notorious that zemindars do not very unfrequently induce ryots to sign kabuliyats or admit jummabundies, and so forth, at rates above those actually paid, promising the ryots that the rate admitted shall not be enforced; and no doubt so long as the ryots are obedient, the rates are not enforced. But if the ryots ever attempt to assert any right against their zemindar, or, as it is blandly put, become rebellious, the kabuliyats and the enhanced rates are promptly demanded, and it becomes extremely difficult for the ryots to establish the true state of the case.

28. The new scheme proposed, involving as it does a judicial decision on the amount of rent payable by every tenant, and the instalments in which it is payable, cannot fail to be an immense temptation to zemindars to resort to practices such as those described above. If, as I apprehend, a mass of suits will be brought against ryots by zemindars in order to obtain the judicial decision which is a necessary preliminary to applying the summary procedure to their tenures, it is probable that a considerable number of them will be decided *ex parte* or by confession. As regards the decrees which will be given in these cases, it appears to me that there really is ground for great apprehension whether they will represent rent actually payable by the ryot, or some rates which the zemindars have prevailed on them to admit. It may be said that it will not be difficult for the ryots to rip up the transaction and expose the fraud if the zemindar ever tries to enforce rent at such rates; but the ryot will have to get rid of his own admission in the first place, and practically will, I think find great difficulty in resisting the zemindars' claim. If all cases could be contentiously decided, which is impossible, I should not see any objection to the author's proposals; but, on the whole, it seems to me that things are not yet ripe for the extension of the summary sale procedure to ryoti holding, and, on the whole, I deprecate the proposition. The case of tenure-holders is different; they are probably sufficiently able to take care of themselves; at least to take care that their tenures are properly registered. But in the case of ordinary ryots, I do not think that this could be generally expected, and I think that it is therefore undesirable to introduce the system of summary sales at least at present. I may add that, but for this difficulty on the threshold, I should have been much disposed to accept the author's propositions, and that I see little else to object to in them. I note a few points which occur to me.

29. Referring to provisos I and II, I should not allow this summary remedy for more than the arrears of one full twelve-month, nor would I allow more than a single application in any period of a twelve-month.

30. I understand section IV to mean this, that if any objection is made by the ryot to the zemindar's claim, the proceedings will take the form of an ordinary rent-suit, and no further execution will be allowed until the question at issue has been finally decided.

31. Coming now to the author's criticisms on Chapter XIV of the revised Bill, I agree with him that it is not advisable that a District Judge should have the power of calling for and revising the proceedings of a Subordinate Judge. If the author's scheme of a summary

procedure is adopted, it is certainly very essential that the addition he proposes to make to section 168 should be made. Otherwise it is not very important, as an ordinary rent decree at present decides nothing as to the future rate of rent.

32. *Page 36, Section 163*.—I agree with the author that on the whole it would be best to leave the requirements of the law *in statu quo* as to the descriptive particulars which the plaint ought to contain. I agree with him that if the boundaries and extent of the holding were necessary to be given, collateral issues would be raised needlessly in rent cases, which would only perplex and encumber the suit. I agree with the author also that sub-section "*e*" might be struck out.

33. *Section 166*.—I do not, however, agree with the author in thinking that the courts should not have power to order the payment of a rent decree by instalments.

34. In the case of a ryot indebted, as of any other indebted person, it may be possible for him by care, economy and self-denial to pay off his debt by instalments; it may be absolutely impossible for him to pay it off in one lump. I do not see that the fact that rent is accruing in respect of a subsequent occupation alters the case in either way. I agree with the author that there is nothing to be gained by transferring these enquiries from civil to the revenue courts, and that it is advisable that they should be conducted by the civil court ameens.

35. I have now come to the last chapter of the author's pamphlet. This contains the author's criticisms on Chapter XV of the draft Bill. On the whole, I dissent from the author's views. I agree with him that the sale procedure laid down in that chapter is somewhat cumbrous, but it seems to me that this cannot be helped.

36. At a sale for arrears, either of a transferable tenure or an occupancy holding, it is not sufficient to provide simply for the interests of the head landlord, or even the first tenure-holder. Subletting is so interwoven with the land system of this country that it is absolutely impossible to allow sales of tenures for arrears without providing some sort of security for the numerous under-tenants of different kinds whose interests will be affected by the sale; and considering the number and complexity of their interests, it seems impossible that the machinery for protecting them should be other than cumbrous. No doubt the procedure proposed by the author is simple and more expeditious, but their advantages appear to me to be gained by the sacrifice of the interests of all tenure-holders below the "protected" class. I say "sacrifice," because it appears to me to afford no efficient protection to many classes of subordinate holders who ought to be protected to provide that they can save their tenures by paying up the arrears before sale, or paying them up after the sale with a fine of 5 per cent. *Ex concessis*, these tenure-holders are not to blame; they have paid their own rents. No laches on their part has brought about the sale, and in such circumstances it is, I think, very hard on them to say that they can protect their tenures only by paying up the arrear of rent due to the principal landlord. This may be relatively to the resources of the tenure-holder a large sum, and it may be impossible for him immediately to raise it, in which case his tenure must be inevitably sacrificed. On the whole, therefore, as the simpler and speedier procedure proposed by the author is only detained by a sacrifice of interests which ought to be protected, I think that it is preferable to preserve the more cumbrous, but more equitable procedure laid down in Chapter XV.

37. I do not think I have any more remarks to offer on this pamphlet, which is herewith returned.

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Dated 1st December, 1884.

From—Babu Bepin Behari Sircar,

To—The Secretary to the Government of India, Legislative Department.

I have the honour to submit a few copies of a memorial adopted by the tenure-holders of Ramdea, Teetolia, Furreedpore and Beharpore, Sub-Division Goalundo, District Furreedpore, and request the favour of your submitting them before the Members of the Legislative Council.

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*Memorial of certain tenure-holders of Ramdea, Teetolia, Furreedpore and Beharpore, Furreedpore District.*

*To His Excellency the Viceroy and Governor General of India in Council.*

The humble memorial of the tenure-holders of Ramdea, Teetolia, Furreedpore and Beharpore, Sub-Division Goalundo, District Furreedpore.

Most humbly sheweth,—That your memorialists and other persons belonging to the high castes in this part of the country hold tenures, which are called *jotedári* tenures, under the pargana zamíndár.

That many of these tenures are very old, while there are other tenures of comparatively recent dates, which also, resembling the old *jotedári* tenures as regards the class of persons who hold them and the circumstances under which they are held, rank with the orderly tenures.

That many of the tenures mentioned above have no title-deeds to support them, and that even as regards their age and antiquity, it is not easy for the holders of the tenures to adduce sufficient and clear proof in all cases.

That as regards the question of uniform payment of rent for 20 years or upwards, even that is not within the means of many such tenure-holders to prove, as living in thatched houses which are exposed to fire and cyclone and such other accidents, they seldom can preserve all their *dakhilas*.

That notwithstanding the above difficulties, these tenures have remained hitherto undisturbed and intact.

That in fact a strong belief that such tenures are not disturbable has always existed in the minds of all concerned, and that by custom they have been treated as transferable and hereditary.

That the present Tenancy Bill has, however, filled Your Excellency's memorialists with anxiety and alarm as regards the security of the tenures mentioned above.

That while section 51 of the Regulation VIII of 1793 protected these tenures from enhancement, section 6 of the Bill, which is substituted for it, would not protect them unless they were proved to have been in existence at the time of Permanent Settlement.

That again supposing the rent of a certain tenure was liable to enhancement, the present law not having contained any clear provision for the enhancement, the zamíndár hardly thought of taking his chance by going into Court for the purpose; but the Bill in a manner invites the zamíndár to enhance the rent of tenure-holders by declaring his right to enhance such rents almost without limits.

That then again the present law had no provision declatory of the zamíndár's power to eject tenure-holders of any description excepting farmers; but the Bill, by sections 11 and 12 of it, by implication gives this power to the zamíndár in all cases except those in which the permanent character of a tenure will be shown on the face of it by documents, or where such a character will be admitted.

That in cases where the tenure-holder himself occupies any portion of the land included in his tenure, the present custom is to regard the tenure-holder to have, in respect of such lands, at least all the rights of an occupying raiyat; but the Bill hardly makes any provision to recognize this custom, on the contrary, by sub-section (*4*), section 7, it ignores this custom.

That having submitted the above as regards the points on which, as rent-payers, Your Excellency's memorialists feel aggrieved by the Bill, they will, in the next place, mention one or two points to which, as rent-receivers, Your Excellency's memorialists think it their duty to draw Your Excellency's attention.

That Your Excellency's memorialists may not object to occupancy-rights being enlarged and being made general; but your memorialists feel bound to say that as sections 25 and 26 of the Bill stands, they will not only create confusion and chaos, but will be actually suicidal.

That Your Excellency's memorialists can understand that a khudkásht raiyat has rights of occupancy to lands which are included in his khudkásht tenure, that is, in the tenure in which his homestead is situated; but if every raiyat is to have rights of occupancy to every bit of land which he may casually or temporarily plough, this will be a fruitful source of confusion between raiyat and raiyat, and the result will be people will attach no value to the rights of occupancy.

That besides it should be remembered that it very often happens that when a khudkásht holding, with the homestead land appertaining to it, is vacated, the landlord makes a temporary settlement of it, pending the arrival of a new khudkásht raiyat to occupy the holding. Now, if the man with whom the temporary settlement is made be empowered to retain possession of the land when he is asked to make it over to a newly-coming khudkásht raiyat, that is, if he be empowered to refuse to act according to the contract made with him to that effect, the result will be that a few raiyats will monopolize the rights of khudkásht raiyat, while others will be homeless wanderers, and the zamíndárs shall not have it in their power to assist such homeless men.

That as regards the novel rules about enhancement, Your Excellency's memorialists will leave the task of criticising and discussing them to zamíndárs, who will be better fitted to do so.

That Your memorialists will humbly say one word with reference to section 48. This section is meant to give relief in cases in which the preceding sections might operate hardship to raiyats.

That if the legislature has misgivings as to the previous sections operating equitably with all cases, your memorialists humbly submit that the said misgivings should be extended towards the interests of the rent-receivers too.

That Your Excellency's memorialists can assure Your Excellency that there are cases in which the rent is so low as two annas per bíghá or four annas per bíghá. In such cases an increase of 25 per cent. of the rent will be nothing, and a landlord will be cruelly punished for the leniency and kindly feelings which actuated him in allowing the rent to remain so low.

Your Excellency's memorialists venture to submit that in view of such cases, section 84 should be worded so as to leave it to the power of the court to disregard the preceding sections in extreme cases of hardship to both the tenant and the landlord.

Your Excellency's memorialists will humbly pray that Your Excellency in Council will be pleased to consider their humble representations and to redress their grievances as set forth above.

Your memorialists as in duty bound shall ever pray.

(*Signed*) BEPIN BEHARI SIRCAR *and 58 others.*

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No. 2091—1077 L. R., dated 10th December 1884.

From—H. H. RISLEY, Esq., Offg. Under-Secretary to the Government of Bengal,

To—The Secretary to the Government of India, Legislative Department.

With reference to the marginal note to paragraph 14 of the report from this Government No. 1906T—R, dated 15th September 1884, on the Bengal Tenancy Bill, I am directed to submit for the information of the Government of India, a copy of the correspondence noted on the margin. I am to observe that the real point at issue was whether the holdings of cultivating ryots who themselves cultivate the land are usually so large as 100 bighas (33 acres) in Behar. The letter No. 98R, dated 3rd December 1884, from the Commissioner of the Patna Division, seems to establish that such holdings are as a general rule less than 100 bighas.

Letter to the Commissioner of the Patna Division, No. 1725T—R, dated 4th September 1884, with endorsement.

Letter from the Commissioner o the Patna Division, No. 98R,, dated 3rd December 1884.,

Letter fr m the Opium Agent of Behar, No. 553, dated 29th November 1884.

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No. 1725T—R, dated Darjeeling, the 4th September, 1884.

From—A. P. MACDONNEL, Esq., Secretary to the Government of Bengal, Revenue Department,

To—The Commissioner of the Patna Division.

I am directed to call your attention to paragraph 4 of your Conference Report on the Tenancy Bill, in which the opinion is expressed that a ryot holding 100 bighas (33 acres of land) seldom sublets. That opinion is opposed to the general opinion expressed on the point in other portions of the country; and seeing that in most districts of Behar population is denser than in the majority of other districts, the opinion of the Patna Conference would seem to need either support or reconsideration. I am therefore to request that the various district officers may be instructed to make special enquiries on the point. It is hoped that your report communicating to Government the results of these enquiries may be submitted before the 1st December next.

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No. 1726T—R.

Copy forwarded to the Opium Agent, Patna, with the request that he will, after consulting with his Sub-Deputy Agents, and after such careful examination of the records of each sub-agency as may be required, report to Government, before the 1st December, whether in the Opium Department the experience is that ryots holding 100 standard bighas of land do usually cultivate the entire holding or sublet portions of it.

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No 98R, dated Bankipore, the 3rd December, 1884.

From—F. M. HALLIDAY, ESQ., Commissioner of the Patna Division,

To—The Secretary to the Government of Bengal, Revenue Department.

With reference to your No. 1725T.R., dated 4th September last, I have the honour to submit the following.

2. In paragraph 4 of the Conference Report of this Division, on the Tenancy Bill, the opinion was expressed that "a ryot holding 100 bighas (33 acres of land) seldom sublets." With reference to this opinion, the Government have observed that it is opposed to the general opinion expressed on the point in other portions of the country, and seeing that in most districts of Behar population is denser than in the majority of other districts, the opinion of the Patna Conference would seem to need either support or reconsideration, and have directed that the several district officers may be instructed to make special enquiries on the point and report the result.

3. The following is the substance of the reports received from the several district officers on the point:—

The Collector of Patna sends a note on the subject by Mr. Grierson, and states that the information he has received from other sources is to the same effect, the general opinon (in which he agrees) being that few ryots in the district hold so much as 100 bighas, and that, of those who have holdings of such extent, few sublet their lands.

In his note Mr. Grierson points out, in the first instance, that the Collector of Patna did not make such a sweeping statement. He said distinctly "except in the case of dearah lands." In dearah lands, Mr. Grierson says, subletting is certainly common. He still

adheres to the statement made in paragraph 4 of the Conference Report. It is the result of his own enquiries. The Court of Wards' Manager and Moulvie Abdul Jubber agree with him on this point. The reason is that subletting is rare because the landlords take such heavy *salamis*. No doubt, Mr. Grierson continues, in a district where the rent is principally paid in kind, and where the laborers who cultivate and cut the crops are paid by allowing them to take a certain portion of the crop as their share, is is difficult to say when a man ceases to be a laborer and becomes an under-tenant. But the idea of under-tenancy is perfectly well known in the district, and has special names such as *sikmi* or *kurthouli*, and the people quite understand the difference between a *sikmi* tenant and a *jan* or *banihar*, who is allowed to take a fixed proportion of the crop as his pay.

In the case of tenants paying rent in kind, he does not pay them to sublet. The landlord takes generally $\frac{8}{16}$ths of the cleaned grain and the ryot takes the straw, the refuse grain, and $\frac{7}{16}$ths of the clean grain. But this is not $\frac{8}{16}$ths or $\frac{7}{16}$ths of the whole crop, for before division a certain proportion of the whole crop is first set apart for the village gods, village servants, &c. Thus the tenant really gets a little over $\frac{7}{16}$ths (including the refuse grain and straw) and the landlord less than $\frac{9}{16}$ths of the gross produce. This $\frac{7}{16}$ths is the smallest proportion which it will pay a man to cultivate land for, and if he sublet it, the actual cultivator would have to give him something and get less than $\frac{7}{16}$ths himself; no one will take a sub-lease on *bhauli* land, and hence again subletting is rare in the ordinary rice lands in Patna.

Mr. Grierson, as Officiating Collector of Gya, in the same way writes that it is rare in that district for tenants holding 100 bighas to sublet. Land in this district if held principally on the *bhauli* system, and as the landlord gets as rent usually $\frac{8}{16}$ths of the net grain produce (after deducting expenses), it does not pay to sublet, as few sub-tenants would take land which gave them less grain profit than $\frac{7}{16}$ths of the crop. In the Government estates in this district only two instances have come to Collectors' notice. In one case the tenant sublets his land because he had become old and poor and could not manage it himself, and in the other case the tenant did so because he had a very large holding in another village. Mr. Grierson adds that as in the case of *bhauli* holding the labourers are paid a fixed proportion of the crop, it does not require the capital to cultivate it that is necessary in the case of a *nugdi* holding.

Mr. Nolan from Arrah states that he dissented from the resolution of the Conference as to removing from the Bill the presumption as to holdings of more than 100 standard bighas. He has seldom come across holdings of so large a size except where the tenant is an indigo-planter. Known the circumstances of the country, it is almost certain, Mr. Nolan thinks, that where as much as 100 bighas is entered against one ryot's name, he either sublets, or the land has been so distributed among members of his family as to be practically cultivated as several holdings. *Guzashta* tenures of 100 bighas are not very uncommon, and these are almost always sublet in part.

Mr. Norman reports that, except on dearah lands ryots, holding 100 standard bighas and upwards are exceedingly rare in the sudder and Hajeepur sub-divisions; so rare that probably they might be counted on the fingers. The cause is doubtless the pressure of the population and the great competition for land. In the Seetamarhi sub-division ryots of this description are not common, not being found at all in the majority of villages; but a much larger proportion of such holdings occurs there than in the other two sub-divisions.

Ryots with substantial holdings (including the few which amount to 100 standard bighas) very rarely sublet, and in the few exceptional cases where they do so, they have either sublet their whole holdings to indigo-planters on *kurthouli* leases, or have sublet small amounts, from 10 cottahs to 2 bighas, on the *bataya* system, to their own servants for good services rendered, or in lieu of wages. The exception to the above remarks is the case of the dearah lands, where subletting a large holding amounting to 100 bighas is common enough. Considerable portions of such holdings are sublet on annual *bhauli* agreements, frequently to low-caste labourers on condition of services. In this district the subletting ryot is generally the small holder who has to eke out his means by service or trade.

The Collector of Durbhunga reports that enquiries show none of the ryots having holdings of 100 bighas or more have sublet either a portion or the whole of their holding. Not a single ryot of this description who had given a sub-lease could be discovered. The enquiries made by the sub-divisional officers were naturally of a general character owing to the short time available for enquiry. In the main the enquiries made by them support the view held by the Patna Conference.

Mr. Price adheres to the opinion expressed by him at the Conference that ryots holding 100 bighas or more do not necessarily sublet part of their holdings. Subletting is perhaps more common in Lower Bengal than in Behar. The Government presume the prevalence of sub-leases of ryoti holdings in Behar from the existence of density of population, but it is in consequence of this pressure of population that men in direct possession of land in any capacity cling to it tenaciously and are loth to part with it under any circumstances.

Well-to-do ryots sometimes grant small pieces of land to their laborers to prevent their going to other employers, as notwithstanding the pressure of population, demand for labor becomes very great in particular seasons of the year. Ryots who have large holdings and cannot for some reason or other defray the expenses of direct cultivation, let out their lands in whole or in part temporarily in bataya; such cases are, however, rare. *Kurthouli* leases to indigo-planters are an exception to the general rule.

The Collector of Sarun, in the first place, observes that the number of such holdings is surprisingly small. In the large Hutwa estate there are only 14 such holdings, while in other fairly-sized zemindaries there are only a few individual instances. Of the 14 ryot holdings in the Hutwa estate above referred to, two of the ryots are said to have sublet any portion of their holdings; eight of them are reported to themselves cultivate the whole of their lands, while in the remaining four cases the holding is divided by private arrangement between the ryot in whose name it stands and his relatives.

The general consensus of opinion among other zemindars is that a holding of the size referred to is beyond the cultivating means of a single tenant (thus being at variance with the facts stated by the Hutwa Raj), and that unless the members of his own family or other near relations are sufficiently numerous to till the whole land, the holder sublets portion of it, sometimes to his own farm labourers and sometimes at *bhatai* or enhanced money rents to other sub-tenants. Judging from the reports, other than that of the Manager of the Hutwa Raj, which the Collector had received, he is inclined to say that the last is, in practice, the usual plan.

The Collector of Chumparun reports the result of the local enquiries held by him shows that 238 ryots have been discovered (in 15 out of 32 tuppas in the district) with holdings of 100 standard bighas or more. Of these 238 ryots, only 12 sublet. It further appears, the Collector says, that 9 out of these 12 subletting ryots held, until within the last few years, their land as *jaghir birt* or *mokarari* tenures. But the Maharajah of Bettiah having examined their title-deeds, and found them to be defective, resumed their lands as rent-paying, and settled them on favourable terms with the former occupants, some of whom reside in another district. It would appear from these enquiries that of actual cultivating ryots holding 100 standard bighas or more, less than two per cent. sublet their lands in this district.

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No. 553, dated 29th November, 1884.

From—W. Kemble, Esq., Opium Agent of Behar,

To—The Secretary to the Government of Bengal, Revenue Department.

With reference to your No. 1726T—R, dated 4th September, 1884, I have the honour to report that I have made enquiries through my Sub-Deputy Opium Agents on the point raised.

From all districts the same report has been received, that raiyats holding as much as 100 bighás as a rule sublet a portion of their holdings, as they found they cannot themselves manage to cultivate such a large area.

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*A Review of the Procedure sections of the Bill (No. II), and a few Suggestions for the simplification of Procedure, by Bábú Mohini Mohun Roy.*

## PART I.

### Especial Procedure for the Sale of Permanent Tenures for Arrears accruing thereupon.

Rent-suits may be divided into two classes, namely, suits for rent against raiyats, and suits for rent against tenure-holders.

Suits for rent against raiyats are generally for small amounts and in batches of large numbers. It generally happens that there is some common point in each batch of such suits the decision of which practically disposes of the batch. The reason why this is so is that raiyats are seldom sued except when there is ill-feeling between them and their landlord; and then we usually find they form combinations, withholding their rents in a body and resisting their landlord's claim on some common or analogous ground. There is not much execution of decree in this class of rent-suits. In a large proportion of cases the raiyats make peace with their landlord after judgment and amicably pay rents, and then the decrees are let alone. In other cases, where the raiyats hold out, the percentage of successful executions is by no means large. Some well-to-do raiyats are able to pay, and made to pay; of the rest it is commonly found, their good friend the mukhtár, who had volunteered his services against their landlord, had absorbed their little substance. They might now be lodged in the civil jail and entertained at the expense of their landlord; but an ordinary Bengal landlord would seldom be so hospitably disposed. He would not care to lay out more money upon his thankless raiyats, but would rather serenely contemplate with great inward satisfaction that he had obtained decrees in a Court of Justice under the British Government. In short, it seldom pays to sue raiyats. When raiyat and landlord fall out, suits have to be brought, and are brought. The process is necessary, and also useful in that it settles some question or point in issue between them, and tends to promote ultimate reconciliation by teaching lessons to, and partially ruining, both; but as a means or machinery for enforcing payment of rent from ordinary raiyats the process is, and will always be, a failure in a financial point of view. If there were no ulterior objects to achieve, a landlord would find it cheaper to forego his rents and let alone his recalcitrant raiyats.

It is widely different, however, in the other class of rent-suits. It does pay to sue tenure-holders,—that is to say, holders of permanent tenures. The rents are comparatively large and

the tenures valuable. The rents of some tenures are realized by summary process under Regulation VIII of 1819, but of the great majority the rents are realized by suit and proceedings in execution. The suits are wholly independent of each other and generally undefended, but there is execution in almost every case which has to be pursued through all stages leading to the sale of the tenure. In nine cases out of ten the amount of the decree is paid up, but rarely before the issue of the sale-proclamation. In a few instances sale takes place and then a proceeding or suit for setting it aside invariably follows. This class of rent-suits forms a large proportion of the rent-litigation of the Province. It is unsafe to hazard a comparison in the absence of accurate statistical data, but the writer has always believed that in districts where the relations between landlords and raiyats are not exceptionally strained the aggregate litigation in, and resulting from, the one class of rent-suits is quite equal to the aggregate litigation in, and resulting from, the other class.

Can this litigation be reduced?

Yes, as regards tenure-holders it admits of very considerable reduction. The revised Bill, however, has done very little in this direction. On the contrary, many little things and formal matters have been invested with undue importance and made the *nuclei* of litigation wholly unknown before. There is a great deal of "pomp and circumstance" in the programme of the Bill. It seems that the ordinary civil tribunals are not sufficient, and the following high functionaries will take part in the administration of justice between landlord and tenant—

(1) His Honour the Lieutenant-Governor (section 130);
(2) special judges (section 115);
(3) special revenue-officers (sections 44 and 110);
(4) the Collector of the district (section 195);
(5) the Board of Revenue (section 129).

But the country does not care for a pageant. What the country requires and cares for is that justice between landlord and tenant should be efficiently administered at the least cost and trouble to them and at the least cost to the tax-payer. The framers of the Bill do not seem to have been fully alive to the importance of simplifying procedure and relations between the two parties they are legislating for. Their Bill, certainly, has a tendency the other way, and has rather complicated and embroiled what it ought to have simplified. It is calculated to promote and increase litigation, and increase of litigation means increase of perjury.

But there is little use in making general charges. The writer will now proceed to specifically point out what is faulty in the procedure sections, and how they might be framed. He will commence with the procedure for enforcing payment of rent from holders of permanent tenures. If a short and simple procedure be found for this class of rent claims, it will greatly reduce the rent-litigation of the province and be a boon to both landlord and tenant. By a short and simple procedure the writer means a procedure which, possessing the qualities of shortness and simplicity, should at the same time be a really efficient one for finally and effectually determining all matters or questions arising, or likely to arise, between the parties to the proceeding, and should leave no room or pretext for a future regular suit. A mere summary procedure is objectionable, because it does not really shorten litigation, but is often the prelude to lengthy and protracted litigation. Our Statute-book at one time was full of summary procedures, but most of them were swept away by the memorable Acts of 1859. We have now remaining Regulation VIII of 1819, which, it must be confessed, has worked very successfully. The secret of this success may be traced to the fact that, under the *in terrorem* process of the Regulation, patnídárs generally pay up their rents and very few sales take place—scarcely one in five hundred cases. If the sales were more numerous, there would soon be an outcry for amending the Regulation. Anybody who has studied the law literature of the country will readily understand what a Regulation VIII sale means. It means a heavy and harrassing suit for setting aside the sale which is fought pertinaciously through all the Courts and all the stages of appeal. Almost every Regulation VIII sale is followed by such a suit, and our Law Reports teem with cases of this class. The service of the notice of sale being left to the zamíndár, there is no presumption that there has been proper service; and the defaulting patnídár, who generally has some influence over his tenantry, can bring any number of them and his own amlá to swear to non-service. The purchaser, on the other hand, takes prompt action for obtaining possession, and tries to bring as many of the resident tenants under his control as he can. The zamíndár, who has to pay costs and refund the purchase-money in the event of the sale being set aside, generally sides with the purchaser; but he cannot do much to influence the result. He brings his peon, and sometimes a second person as having accompanied the peon, to swear to the service of notice; but the issue chiefly depends upon the testimony of the resident tenants. Here the fight is between the defaulting patnídár and the purchaser, and each side produces a long array of witnesses to outswear his adversary on a single question of fact. A great deal of doubt and uncertainty hangs over the result, and it is an even chance with any sale under Regulation VIII whether it would stand good or be set aside. This state of things necessarily enters into the calculation of a purchaser and influences the price; and the low price fetched becomes again an incentive to the defaulting patnídár to sue for the reversal of the sale. Curious points of law sometimes crop up in such suits. In one case, reported in 2 Weekly Reporter, page 188, the point was raised whether a tailor was a "substantial person" within the meaning of section 8, Regulation VIII of 1819 (section 196 of the revised Bill), which requires that the serving peon shall obtain the signatures of three substantial persons residing in the neighbourhood in attestation of the service of notice. Two

learned Judges of the Calcutta High Court held than a tailor was not a "substantial person" probably upon the principle that nine tailors make a man, although this obvious ground is not specially mentioned in their judgment.

The writer has studied the subject long and carefully. He begs to offer, for the consideration of the legislature and the public, a draft of an especial procedure for the sale of permament tenures for arrears, in lieu of the sections contained in Chapter XVI of the revised Bill. This procedure will apply to permanent tenures of every decription and all matters or questions arising between the parties will be finally determined thereunder as in a proceeding for the execution of a decree. Its outline is as follows :—

1. Any permanent tenure may be registered on application made either by the landlord or the tenant to the Court of the Subordinate Judge of the district, who shall prepare and keep a register for this purpose and enter therein the amount of annual rent, the instalments in which it is payable, and other particulars. Registration is left optional and not made compulsory.

2. Application may be made to the Subordinate Judge for the periodical sale of a tenure registered as above for arrears accruing thereupon. Registration of a tenure in the manner aforesaid in a Civil Court has practically the same effect as a declaratory decree, that the tenure is liable to pay as annual rent a certain amount in certain instalments. Any question of payment that may be raised by the tenant shall be tried and determined by the Court as in an execution proceeding.

3. The service of the notice of sale shall be made by an officer of the Court and not left to the landlord.

4. When a tenure is sold, the question whether the sale shall be confirmed or set aside shall at once be determined and finally set at rest.

5. When a sale is confirmed, all claims for compensation by under-tenants for the avoidance of their under-tenures, and other questions relating to the distribution of the surplus sale-proceeds, shall be tried and determined by the Court as in the case of an execution-sale.

The above sketch is a very bare outline of the scheme. The writer hopes every reader who takes an interest in the subject will carefully go through the sections in the draft, and the notes appended thereto explanatory of their objects and reasons. It will not be more than an hour's reading, whech it has cost many days to the writer to think out and put into presentable shape.

One essential feature of the scheme is that everything should be done by the Civil Court, and done once for all. The acts being of a judicial nature, they would be more efficiently performed by the Civil Court than by the Collector of the district. His functions are multifarious and leave him little spare time. If you give him extra work, it is just possible that it may be ill-done, and may at the same time act like the proverbial last straw upon the camel's back. Act X of 1859 invested him with jurisdiction to try suits between landlord and tenant. The experiment proved a signal failure. The Collector's decision never did, and never will, inspire confidence. There is another very serious objection to his being entrusted with judicial functions in any class of cases between landlord and tenant. You cannot give him power to decide finally. His orders and decisions will necessarily be open to revision in a civil suit, and the same work will have to be done over again in the Civil Court to the great cost and harrassment of the parties. This was the state of things before 1859. The Collector tried summary suits for rent under Regulation VII of 1799, and held summary sales of patni taluqs under Regulation VIII of 1819. Regulation VII of 1799 has been repealed, but the Collector continues to exercise the power of holding summary sales under Regulation VIII of 1819. The evils and defects of a mere summary procedure have already been pointed out, and they would be greatly aggravated if it were, without large modifications, extended to the other classes of permanent tenures. As our special procedure is not a mere summary procedure, but one under which all matters in contest between the parties would be finally decided, it follows that the Civil Courts alone could be entrusted with jurisdiction under the said procedure. But it must be a Civil Court possessing the following qualifications :—

(1) that it is presided over by an experienced Judge;
(2) that it possesses a record-room;
(3) that it has a public treasury close at hand.

The Court of the Subordinate Judge may fairly be said to possess all these qualifications. It is true he has not generally a separate record room of his own, but shares that of the District Judge. But this may be easily set right by allotting him a separate room in the court-building for his records. The Court of the District Judge does, no doubt, very well answer to our description; but the machinery is too costly to be put to such ordinary use. An Additional District Judge, if required, would cost three times as much as an Additional Subordinate Judge. Besides, according to our especial procedure, the services of the District Judge should remain available for certain purposes of appeal and general supervision. The Court of the Subordinate Judge, which is the principal Court of original jurisdiction in the Mufassal and commands general confidence, may safely be trusted to exercise jurisdiction under the especial procedure. It will involve a slight increase of ministerial establishment, and, in some districts, it may necessitate the appointment of an Additional Subordinate Judge; but this outlay will be counterbalanced by saving one or two extra Munsifs in each district, for the special procedure

will greatly reduce rent-litigation, and it may be confidently affirmed that two years after its passing there will scarcely be any suit for rent against a tenure-holder.

The writer will, in a future paper, review the other procedure sections of the revised Bill, and will now, without further preface, introduce the reader to—

*A Draft of an Especial Procedure for the Sale of Permanent Tenures for Arrears accruing thereupon (in lieu of Chapter XVI of the revised Bill).*

*Section 1.*—If default is made in the payment of the rent due in respect of a tenure registered under this Act in the manner hereinafter provided, the landlord may, in addition to any other remedy given him by law, apply by petition in the Court of the Subordinate Judge for the sale of the tenure in accordance with the rules contained in the following sections of the chapter.

NOTE.—This is section 194 of the revised Bill slightly altered.

*Section 2.*—Such petition may be presented four times in the year, during the first month of each quarter, shall be duly verified and shall contain the following particulars:—

(1) name, description and address of the landlord;

(2) name, description and address of the tenure-holder;

(3) name of the tenure, its annual rent and registry number;

(4) name of the village and thana in or adjacent to which the tenure or a part thereof is situated, and where the notice of sale shall be served;

(5) specification of the balance due up to the end of the last preceding quarter;

(6) Statement of the instalments of rent and other demands (for example, public cesses) recoverable as rent, payable during the current quarter and up to the date of sale;

(7) prayer for the realization of the aggregate amount with interest and costs by the sale of the tenure.

*Proviso I.*—No such petition shall claim rent at a higher rate than that entered in the Register.

*Proviso II.*—No such petition shall include arrears of rent barred under the rules of limitation contained in Schedule IV of the Act.

*Proviso III.*—No such petition shall be entertained unless it shews that a balance for the period preceding the commencement of the current quarter exists at the date of the petition against the tenure-holder.

NOTE.—The sales were half-yearly under Regulation VIII of 1819. The reason for making them quarterly is that it will distribute the work of the Courts more evenly and prevent a rush at certain seasons.

Under Regulation VIII of 1819 petitions were presented on the first days of Baisakh and Kartik, just one month before sale. Petitions may under this procedure be presented on any day during the months of Baisákh Sraban, Kartik and Mágh, from three to four months before sale. The object of making this change is to allow ample time to the Civil Court to examine the petitions, to issue and serve the requisite notices, and to determine before the day of sale any question of payment that may be raised by the tenure-holder. It should be noted, however, that although petitions for sale may be presented during the first month of each quarter practically a tenure cannot be proceeded against oftener than twice in the year, for a proceeding commenced in one quarter will run into the next, and prevent a second petition being put in until a fresh arrear shall have accrued at the end of the next quarter.

Under Regulation VIII of 1819 petitions could be made only for the rents of the current year. This provision was made at a time when the limitation for a civil suit for rent was twelve years. The period of limitation is now three years—and short enough. There is no object now in prescribing a different and shorter period of limitation for petitions under this chapter. Suitors ought not to be compelled to resort to a Court of law more frequently than they consider it necessary or convenient. Under Regulation VIII of 1819, if the patnidar was in balance for a few rupees at the end of the year, the landlord was obliged to institute proceedings at once or to forego the summary remedy altogether. This is found extremely inconvenient.

There is one very important point for consideration in connection with this section, being a question of judicial finance. A petition in the Subordinate Judge's Court ordinarily bears a court-fee stamp of eight annas. Should a heavier stamp duty be imposed upon petitions under this section? The writer believes that the eight annas stamp-duty will be sufficient to cover all additional expenditure; but, if it be deemed necessary to impose any special stamp-duty, it should be one-fourth of the stamp for plaints, with a maximum limit of ten rupees and a minimum limit of eight annas.

*Section 3.*—The days for the sale of tenures under this chapter shall ordinarily be the twenty-eighth day of the month following each quarter of the year during which the petition is presented; but if the twenty-eighth day of the month be a Sunday or a close holiday, the sale shall take place on the next open day.

NOTE.—The sale days will be the 28th Srában, the 28th Kártik, the 28th Mágh and the 28th Baisákh respectively, for petitions presented during the month of Baisákh, Srában, Kártik and Mágh.

The sale should take place during the first month of the next quarter and the title of the purchaser date from its commencement. This will prevent any complication of account between the landlord, the out-going tenure-holder and the purchaser. The twenty-eighth day of the month has been selected as allowing ample time for the service of notice and trial of any questions that may be raised by the tenure-holder, and also as approaching closely the well-known sale days under Regulation VIII of 1819.

*Section 4.*—On the presentation of the petition, the Court shall register it, appoint a day for the sale in accordance with section 3, and, on the payment of costs by the petitioner

cause to be served and affixed in conspicuous positions at the following places, not less than twenty days before the day appointed for sale, notices for the sale of the tenure :—

(1) in the court-building;
(2) at the dwelling-house of the tenure-holder;
(3) in the village in or adjacent to which the tenure or any part thereof is situated;

Provided the Court, instead of proceeding as above, may, at its discretion, return for amendment or reject the petition, if it is not framed in accordance with section 2 or if it is in contravention of proviso III of the said section.

NOTE.—A form of the notice should be given in a schedule. Among other particulars it should contain, for the information of the tenure-holder and the public, sections 6, 7 and 13 quoted *in extenso*.

*Section 5.*—On a return being made of the service of notice, the Chief Ministerial Officer of the Court shall forthwith take the affidavit of the serving peon and make a report in each case. If there shall have been no proper service in any case, the Court may order re-service of notice, if there be time for re-service, or stop the sale.

*Section 6.*—The tenure-holder may at any time before sale pay into Court the arrears due up to the date of payment with interest and costs. Upon such payment being made the Court shall record a proceeding and stop the sale of the tenure.

*Section 7.*—If the tenure-holder desire to contest the demand made in the petition, he shall within fifteen days of the service of notice file in Court a verified written statement of his case, together with all receipts and other documentary evidence in support thereof; but the Court may, upon good cause shown, allow such written statement to be filed after fifteen days of the service of notice.

*Section 8.*—The Court on receiving a written statement from the tenure-holder as aforesaid shall appoint an early day for the hearing of the case, give notice of the same to the landlord and try and determine the issues between them on the appointed day; but no sale shall be stayed by reason of the pendency of such trial, unless the tenure-holder deposit in Court the amount of the landlord's demand.

If the Court decide that there was no arrear due at the date of the petition, it shall dismiss the petition and stop or cancel the sale of the tenure, as the case may be.

If the Court decide that any part of the arrear claimed was not due, or that the tenure-holder has established no case for reducing the arrear claimed, it shall record its finding and reduce or uphold the landlord's demand accordingly. Such decision will not interfere with or affect the sale of the tenure.

NOTE.—See section 198 of the revised Bill.

*Section 9.*—The decision of the Court under the last preceding section shall be final, if the amount in dispute between the parties do not exceed Rs. 500. If the amount in dispute exceed Rs. 500, an appeal shall lie as an appeal from a decree to the District Judge or to the High Court, as the case may be.

NOTE.—The matters in dispute between the parties will thus be finally determined.

*Section 10.*—At the time of the sale, the tenures, with the exception of those which shall have been exempted from sale under any of the preceding sections shall be successively called up according to the order of the petitions for sale and put up to sale by public auction.

No lot shall be withdrawn from sale without the consent of the landlord, unless the whole amount of the arrears with interest and costs shall be paid into Court or to the landlord by the tenure-holder or any person who possesses an interest in the tenure which would be voidable upon such sale.

The sales of the tenures shall be continued from day to day until all the lots shall be sold.

*Section 11.*—Every one except the tenureholder shall be free to bid at such sale. The officer conducting the sale may refuse to accept a bid, unless he is satisfied that the amount required to be deposited is in hand for the purpose or will be produced within two hours.

NOTE.—Section 201 of the revised Bill.

*Section 12.*—Fifteen per cent. of the purchase-money shall be paid immediately after the lot is knocked down, and the remainder of the purchase-money on the eighth day.

If the landlord becomes the purchaser, he may set off the amount due to himself against the purchase-money.

If the fifteen per cent. is not paid in cash or Government securities within two hours of the sale, the lot shall be re-sold on the same day.

If the remainder of the purchase-money be not paid on the eighth day notice of re-sale to take place on the tenth day, shall be given on the following day by proclaiming the same by beat of drum through the bazar of the sadr station.

The lot shall be re-sold on the tenth day, as notified, at the risk of the first purchaser, who shall forfeit the deposit of fifteen per cent. and be further answerable for any sum in which the proceeds of the second sale may be short of the previous sale; such deficieney to be levied by the process for the execution of decree.

The forfeited deposit shall be applied to defray the expenses of the sale, and the surplus shall be credited to Government.

NOTE.—The second paragraph of this section enables the landlord, if declared purchaser, to set off the amount due to himself against purchase-money as in execution-sales. With this exception the section is section 201 of the revised Bill re-produced.

*Section 13.*—At any time within thirty days of the sale, the tenure-holder, or any person who possesses an interest in the tenure which would be voidable upon such sale, may pay into Court the amount due to the landlord, together with costs and interest and a sum equal to five per cent. of the purchase-money.

Provided that where the landlord is the purchaser the tenure-holder shall not pay five per cent. compensation on the amount which the landlord has set off against the purchase-money.

Upon such payment being made, the Court shall cancel the sale and forthwith refund to the purchaser that amount of the purchase-money, together with five per cent. on the said amount as compensation.

If no such payment be made, the Court shall, on the expiration of the time allowed therefor, declare the sale to have become absolute, and grant a certificate to the purchaser specifying the tenure sold, and stating that the purchase shall have effect from the commencement of the quarter.

Except as provided above, no sale under this chapter shall be cancelled or set aside by suit or application; but nothing herein contained shall debar the tenure-holder from obtaining equitable relief or damages against his landlord on proof of fraud in a civil suit or against any other person party to such fraud.

NOTE.—This section introduces a very important change. The evils of a future civil suit to set aside the sale have already been pointed out. The Code of Civil Procedure enables a judgment-debtor to set aside an execution-sale upon proof of two things, namely:—

(1) that there was material irregularity in publishing or conducting it;

(2) that he has sustained substantial injury by reason of such irregularity.

This last clause has been interpreted to mean that the property has been sold at an inadequately low price. The proceeding for setting aside the sale, which has to be commenced within thirty days and is generally brought to a speedy conclusion, is not so costly and harassing as a regular suit. But if we examine the principle of such proceedings and suits, it will appear that they rest upon a purely artificial basis. The purchaser is dragged into this litigation, which turns upon the service of the notices of sale and the market-value of the property sold, and in which there is commonly a great deal of perjury on one side or the other. It is intelligible that the debtor's property should not be sacrificed, and that a sale should be set aside which involved a sacrifice of the property. But then, why render it necessary for the debtor to prove non-service or irregularity in the publication of the sale and raise an issue so prolific of perjury?

The object of the provisions made in this section is to relieve the tenure-holder of the necessity of proving irregularity and to put him upon practical proof of inadequacy of price. It is by no means easy to ascertain the exact market-value, which varies from ten to twenty per cent., according to circumstances and according to the necessity of the seller and the eagerness of the buyer. It cannot be said that a property has been sold at an inadequate price which has been sold within ten or twenty per cent. of the price at which it can be sold under private contract. If the price fetched at auction be really inadequate, the tenure-holder ought to be able to raise money within thirty days by mortgage or sale so as to be able to pay five per cent. as compensation to the auction purchaser. The tenure-holder, again, ought not to get the sale cancelled without paying up the arrears due to the landlord. Thus we give the tenure-holder an opportunity of recovering his property, without lawsuit and perjury, at a cost to himself of five per cent. upon the purchase-money, and deprive him of the questionable advantage of instituting a suit or proceeding to set aside the sale and spending ten times as much money on a doubtful issue.

There can be no doubt that the purchaser ought to be fully and sufficiently compensated for his risk, trouble, expense and detention of money. This should be fixed at not less than five per cent. upon the purchase-money, and not left to the discretion of the Court. Both the tenure-holder and the auction-purchaser ought to be certain about terms upon which a sale might be cancelled. Purchasers will readily come forward if the law secure them five per cent. upon their money without dragging them into a costly and harassing litigation. In short, purchasers should not receive shabby treatment, as such treatment will ultimately injure the tenure-holders themselves by deterring people from purchasing at such sales.

*Section 14.*—The purchaser of a tenure under this chapter shall acquire the tenure with power to avoid, in the manner prescribed by section 184 for the avoidance of encumbrances, all liens, sub-tenancies, easements and other rights or interests created in the tenure by the tenure-holder or any of his predecessors in interest or any person claiming under him or them, except—

(*a*) a right of occupancy;

(*b*) a right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred; or

(*c*) any right or interest created under a power expressly conferred by the written instrument by which the tenure was created.

NOTE.—Section 202 of the revised Bill.

*Section 15.*—The purchaser may apply for delivery of possession, and the Court shall thereupon put him in possession of the tenure in the same manner as in the case of a sale in execution of a decree.

NOTE.—See section 203 of the revised Bill.

*Section 16.*—The provisions of section 188 and, if the person making the payment is a tenant inferior to the tenure-holder, the provisions of section 189 also shall apply to payments made under section 10 or under section 13 by any person who possesses an interest in the tenures which would be voidable upon the sale thereof.

NOTE.—Section 204 of the revised Bill.

*Section 17.*—When a tenure has been sold under this chapter, any person having an interest therein which is voidable upon such sale may within two months of the date of the sale apply to the Court to be paid compensation out of the surplus proceeds of the sale, if any:

Provided that no tenant inferior to the tenure-holder shall be entitled to make such application, if at the time of the sale any arrear was due from him.

NOTE.—This is a section 206 of the revised Bill slightly altered. There is no necessity for separate suits in respect of the claims to the surplus sale-proceeds. They may be dealt with by the Court on application, as in the case of an execution-sale.

*Section 18.*—When any day specified in the chapter is a Sunday or holiday, anything required or authorized under this chapter to be done on that day may be done on the next following day, not being a Sunday or holiday.

In this chapter "quarter" means a quarter of the agricultural year, each quarter consisting of three months reckoned from the commencement of the year.

*Rules for the Registration of Tenures.*

*Section 19.*—The following registers shall be kept in the Court of the Subordinate Judge:—

(1) a general register for each parganá of permanent tenures situated therein:
(2) an intermediate register for each parganá of changes affecting entries in the general register;
(3) a register for each parganá of leases creating permanent tenures or qualifying the terms thereof;
(4) a register for each parganá of counterpart leases creating permanent tenures or qualifying the terms thereof.

NOTE.—Of all local divisions, parganá divisions are the best known and least subject to change. The name of the parganá occurs in every lease and every rent-receipt. For facility of reference, some division of the registers is necessary, and division according to parganá seems to be most suitable. Thánás and sub-divisions are subject to frequent changes and unsuitable for our purpose.

Divisions according to class of the tenure will be attended with great difficulty. There are tenures which will not come under any class. Changes occur also in the class of the tenure, for example, a darpatni is commonly a tenure of the second order, but becomes a tenure of the first order on the proprietor purchasing the *patni*.

*Section 20.*—In the general register of permanent tenures the following particulars shall be entered:—

(*a*) name of the parganá;
(*b*) serial number of the tenure;
(*c*) name and address of the landlord;
(*d*) name and address of the tenure-holder;
(*e*) name by which the tenure is known in the landlord's papers;
(*f*) the amount of annual rent;
(*g*) the instalments in which the rent is payable;
(*h*) name of village and thánd in which the tenure is situated;
(*i*) reference to the register of leases and counter-leases;
(*j*) reference to entries made in the intermediate register after the preparation of the general register.

NOTE.—The above particulars will be quite sufficient. People should not be troubled for particulars not necessary for the purposes of this chapter.

*Section 21.*—In the intermediate register all changes in the names of the landlord and tenure-holder, changes in the amount of annual rent, whether by contract or decree of Court, and changes in other particulars shall be recorded in a convenient form.

*Section 22.*—In the register of leases and counterpart leases, the following leases and counterpart leases relating to tenures registered under this chapter shall be entered and authenticated by the seal and signature of the Subordinate Judge:—

(*a*) leases and counterpart leases which have been registered under any law for the time being in force for the registration of documents;
(*b*) leases produced by the tenure-holder which shall be admitted by the landlord or correspond to the counterpart lease produced by him;
(*c*) counterpart leases under similar conditions;
(*d*) leases and counterpart leases found to be genuine by a judgment of the Civil Court binding upon the landlord and tenure-holder;

and no others.

Such registers shall be "public records kept in British India of private documents" within the meaning of sub-section 2, section 74 of the Indian Evidence Act, 1872.

NOTE.—A register of this description is greatly needed. It will save time and trouble to the Court and to the parties, who will be relieved from producing and proving their documents in every rent-proceeding. It will afford protection to the heirs and transferees of both landlord and tenure-holder, who cannot always obtain the original documents. This register, together with the general register of tenures, will offer full and reliable information to intending auction-purchasers, who need not now buy in the dark.

But care should be taken to exclude spurious documents. The opportunity of registration would be eagerly seized to get in spurious leases and counterparts. If the Court were to go into evidence in the case of each document, it will open up an extensive field of litigation. The Court need enter only such documents as are of the descriptions mentioned in the section and undisputable.

It may be observed that the registration of leases and counterparts is not absolutely necessary for the purpose of registering tenures. Documents which are disputable may be excluded without producing any difficulty or incongruity.

*Section 23.*—Every landlord, being a proprietor, whose name has been registered under the Land Registration Act, 1876, and every landlord, being a tenure-holder, whose tenure has been registered under this Act, may apply for the registration of all tenures held under them. And every tenure-holder, whose landlord is a proprietor registered under the Land Registration Act, 1876, or whose landlord is a tenure-holder registered under this Act, may apply for the registration of his tenure.

NOTE.—Registration should not be made compulsory. People will readily come forward to register their own tenures and tenures held under them. Registration offers manifest advantages to both landlord and tenant, which will be quickly perceived and eagerly availed of.

Tenures may be registered on the application of either landlord or tenure-holder. The only condition insisted upon, and insisted upon for an obvious reason, is that the parent estate or tenure should be previously registered.

*Section 24.*—Every application for the registration of a tenure shall be presented in the Court of the Subordinate Judge, duly verified and accompanied by leases or counterpart leases relating to the tenure, if any. It shall contain the following particulars :—

(1) (*c*) to (*i*) of section 20 ;
(2) name and description of the immediately superior estate or tenure, and reference to its registration under the Land Registration Act, 1876, or this Act ;
(3) date and description of leases and counterpart leases filed with the application, if any.

*Section 25.*—The Court, on receiving an application framed as above, shall register the same and issue a summons to the opposite party, whether landlord or tenure-holder, to file in his Court a return duly verified, accompanied by leases or counter-leases relating to the tenure, if any, and containing the particulars specified in section 24.

If the opposite party do not file his return within the time appointed in the summons, the Court may proceed against him as against a recusant witness under the rules contained in that behalf in the Code of Civil Procedure.

*Section 26.*—The Court, on receiving a return under the last preceding section, shall appoint a day for hearing in the presence of the agents or vakíls of both parties.

Upon the day appointed for hearing, if the Court shall find, after reading the petition and return, and examining, if necessary, the agents or vakíls of the parties, that there is no difference between them on any of the following points :—

(*a*) admissibility of the tenure to registration,
(*b*) amount of annual rent payable therefor,
(*c*) instalments in which the rent is payable,

the Court shall record a proceeding and pass order for registering the tenure and any lease or counterpart lease filed by the parties which are admissible for registration under section 22 of this chapter. The Court may also note in the proceeding, and direct to be noted in the general register, any difference existing between the parties in other particulars. The tenure and the admitted lease or counterpart lease shall thereupon be registered, and a memorandum of such registration shall be endorsed upon such lease or counterpart lease under the seal and signature of the Court.

*Section 27.*—If after reading the petition and return and examining the agents or vakíls of the parties, the Court shall find that there is a difference between them on any of the points specified in the last preceding section, the Court shall record the points of difference, appoint a day for hearing and upon the appointed day try and determine the issues between the parties as in a declaratory suit.

Registration shall thereupon take place in such manner as the judgment shall direct.

*Section 28.*—An appeal shall lie from the judgment of the Court as an appeal in a declaratory suit.

NOTE.—Any dispute between the parties will thus be at once and finally decided. This is one great advantage of having the registration made by the Civil Court.

*Section 29.*—Any changes in the names of the landlord and tenure-holder, changes in the amount of annual rent, whether by contract or decree of Court, and changes in other particulars may be registered in the Court of the Subordinate Judge in a similar manner under a procedure following as nearly as possible the lines of sections 25 to 28.

NOTE.—It will be seen that the registration of tenures in the Civil Court under the above procedure will present no difficulty of any kind. In the large majority of cases there will be no difference between the landlord and tenant, and registration will be a mere formal matter. In some few cases differences will arise, and then they will be determined at once and finally between the parties. Registration being left optional, it is not likely that the parties will bring before the Court contentious cases in large numbers. People usually bide their time and do not rush into Court with doubtful or disputed claims, unless compelled to do so by any rule of limitation.

The writer humbly suggests that provision should be made for the repeal of Regulation VIII of 1819 two years from the date of this Act. Within that period all landlords should be able to register tenures held under them.

The writer hopes he has sufficiently shown that the registration of tenures is not such a bugbear after all, and that it does not require a separate Act of the Bengal Council. Everything depends upon the manner of doing

it. It may be easily done under an easy and simple procedure without producing any appreciable friction between landlord and tenant. But it is quite possible to do it in a different manner so as to embroil landlord and tenant and to produce the greatest crop of litigation out of it. If that be the object, pass a long and cumbersome Act, make registration in great detail and of a large number of unnecessary particulars compulsory, and entrust the work to the Collector of the district.

## PART II.

### Rent-suits and Sales for Arrears under Decree.

In suits for rent, one or more of the three following issues usually arise for trial, namely :—

1. What is the annual rent of the tenure or holding ?

2. In what instalments is it payable ?

3. What payments have been made by the tenant ?

The third issue is comparatively unimportant, and its trial presents little difficulty. Payments are usually evidenced by receipts. Any false case on either side on this point is easily detected, and sometimes leads to criminal prosecutions. This acts as a sufficient deterrent, and very few cases occur in which there is any serious contest between the parties regarding payments ; but the other two issues are points of vital importance. The affirmative lies upon the landlord. He has to prove it in all *ex-parte* suits and in the great majority of defended suits, the line of defence commonly adopted being to join issue on the annual rent claimed by the landlord and to throw upon him the burden of proving it.

The especial procedure set out in Part I of this Review rests upon this principle, that where the Civil Court has, in the course of registration, determined the amount of annual rent and the instalments in which it is payable a formal suit for rent is needless, and the landlord may at once apply for the sale of the tenure as in an execution-proceeding, in which any question of payment raised by the tenure-holder may be as fully tried and finally determined as in a regular suit. The special procedure is, for obvious reasons, inapplicable to raiyats' holdings, and cannot be safely extended to tenures other than permanent tenures. When a raiyat makes default in the payment of rent, and the matter has to be brought into Court, it must, in the first instance, be in the shape of a proceeding in which the Court shall be able to fully try all or any of the three issues stated above which may be raised in the case. Such a proceeding, by whatever name you call it, is no other than a civil suit. The question of court-fee stamp is not of much importance in rent-suits against raiyats. The suits are generally for small amounts, and the stamp-duty that has to be paid forms a very small proportion of the actual costs that have to be incurred in such suits.

But when in a civil suit a decree has been made for the rent of a holding or tenure, and the amount of annual rent and instalments determined, there is no reason why there should be a series of suits for subsequent years against the same tenant. He may be proceeded against by application as in an execution-proceeding for subsequent rents accruing upon the same tenure, and in such proceeding any question of payment or other matter that may be raised by the tenant shall be tried and determined. This will save to the Court the civil suit, to the tenant the legal costs thereof, which ultimately fall upon him, and to the landlord the extra costs and two months' time, which is the usual period of gestation of an ordinary rent-suit. The writer thinks that the addition of a few sections on the following lines to the chapter on Judicial Procedure will eliminate a great deal of unnecessary and costly procedure, and be advantageous to both landlord and tenant :

1. In every suit for rent the Court shall find and specify in its decree the annual rent of the tenure or holding and the instalments in which it is payable.

2. When the annual rent of a tenure or holding, and the instalments in which it is payable have been determined and specified in a decree as aforesaid, the landlord may, on the accrual of subsequent arrears on the same tenure or holding against the same tenant or raiyat, apply by petition in the said Court that the amount of such arrears be recovered under the rules for the execution of a rent-decree.

*Proviso (1)*—No such petition shall claim rent at a higher rate than that specified in the decree, nor include arrears of rent barred under the rules of limitation contained in schedule IV of the Act.

*Proviso (2)*.—No such petition shall be presented oftener than twice in the year.

*Proviso (3)*.—No such petition shall be entertained after the lapse of ten years from the date of the decree.

Note.—Section 293 of the Code of Civil Procedure and Act VII of 1880 (B. C.) furnish instances of the application of the execution procedure without previous suit. There is nothing anomalous or incongruous in it.

To prevent the tenant being harrassed, and the Court being flooded by such petitions on default being made in every monthly kist, *Proviso No (2)* has been put in as a necessary safeguard.

Some rule of limitation, such as is contained in *Proviso No (3)*, seems also to be necessary. It is obvious that a decree specifying the annual rent and instalments should be renewed at certain intervals, in order to keep pace with the progress of time and the changes brought on thereby.

3. On the presentation of the petition, the Court shall register it and issue a notice on the opposite party to appear on an appointed day and show cause why the amount claimed in the petition should not be levied from him. The Court may, simultaneously with the issue of notice to the opposite party, issue process for the sale of the tenure if it be saleable, or for the attachment of moveable and immoveable property belonging to him; but no warrant for the arrest of the opposite party shall be issued until after the expiration of the day appointed for his appearance to show cause.

4. If the opposite party do not appear and show cause, the Court shall make the rule absolute. If the opposite party appear and show cause, the Court shall hear the case in the presence of the parties. If the parties are at issue on questions of fact, the Court may adjourn the hearing and fix a day for the production of evidence and final disposal of the case. On the appointed day, the Court shall try and determine the issues between the parties, and record judgment which may be for upholding, reducing, or dismissing the claim of the landlord.

5. The decision of the Court under the last preceding section shall have the force and effect of judgments in rent-suits, and shall be open to appeal and revision under the rules and limitations applicable to decrees in such suits.

It will be seen that the recovery of rents by the execution procedure as sketched above will present no difficulty of any kind. The tenant, if he have any good cause to show against his landlord's claim, will have a full trial of his case. In short, nothing is excluded by this procedure except a needless formal suit.

The writer will now proceed to consider a few sections of chapter XIV of the revised Bill relating to Judicial Procedure, which, in his opinion, are especially open to objection, or on which improvements may be suggested.

## CAPHTER XIV OF THE REVISED BILL.

### Judicial Procedure.

*Section 160.* (1) *The cause of action in all suits between landlord and tenant as such shall for the purposes of the Code of Civil Procedure, be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the recovery of the land in respect of which the relation of landlord and tenant exists between the parties.*

*Section 168. An appeal shall not lie from any decree or order passed, whether in the first instance or on appeal, in any suit instituted by a landlord for the recovery of rent, where—*

*(a) the decree or order is passed by a District Judge, Additional Judge or Subordinate Judge, and the amount claimed in the suit does not exceed one hundred rupees; or*

*(b) the decree or order is passed by any other judicial officer especially empowered by the Local Government to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed fifty rupees;*

*unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto or a question of a right to enhance or vary the rent of a tenant.*

*Provided that the District Judge may call for the record of any case in which a judicial officer as aforesaid has passed a decree or order to which this section applies, if it appears that the judicial officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of his jurisdiction illegally or with material irregularity, and may pass such order as the District Judge thinks fit.*

Sections 160 and 168 may be considered together. To allow no appeal from a decree or order passed, whether in the first instance or on appeal by a Subordinate Judge in rent-suits under Rs. 100, is a move in the right direction. But the exception to this rule should be extended by adding a clause to the following effect in the fourth paragraph of section 168:—

> "or unless the decree or order has decided a question of the amount of annual rent payable by the tenant or of the instalments in which it is payable."

It has been shown at the outset that these are questions of vital importance between landlord and tenant. Any decision on these issues goes a great deal beyond the scope of the suit in which they are raised, and seriously affects the position and rights of the parties in respect of future rents. Such decision should be open to appeal.

The last paragraph of section 168 should be omitted. It will do no good to give this power to the District Judge. The High Court has it under section 622 of the Code of Civil Procedure, and it ought not to be conferred upon an inferior Court. Any exercise of this power by the District Judge is sure to lead to a further application to the High Court, and it will be held as often as not that the Judge in setting the first Court right has himself, "exercised a jurisdiction not vested in him by law."

The writer has noticed section 168 first, because the provisions of that section would lend strong support to the following important suggestion which he would submit for the consideration of the legislature and the public, namely, to make all rent-suits and applications under the Rent Act cognizable by the Court of the Subordinate Judge. There is little advantage in having the small suits of this class tried in the first instance by a less experienced officer and then re-tried by the Subordinate Judge in appeal. The appeal may very well be saved by making

them triable in the first instance by the more experienced officer. Especial Judges and especial Courts mentioned in clause (*b*) of section 168 are not likely to prove successful. It will be far more simple and far less costly to entrust the jurisdiction to Subordinate Judges—a class of judicial officers who possess general confidence and stand well in public estimation. The Local Government should bear in mind that the appointment of Subordinate Judges is in its hands, and that it is more simple to appoint efficient men to preside over these established tribunals than to create especial Courts. It is also a point of great importance that there should be no doubt as to the jurisdiction of the Court. Section 160 as framed will render a much larger proportion of rent-suits cognizable by the Subordinate Judge than under the present law. This is good so far; but the jurisdiction will depend upon the value of "the land in respect of which the relation of landlord and tenant exists between the parties." The Subordinate Judge or the Munsif will have jurisdiction accordingly as the value of the land does or does not exceed Rs. 1,000. This is a question of fact which will be frequently raised, and will have to be determined on evidence. All this unnecessary litigation may be avoided by giving exclusive jurisdiction to the Court of the Subordinate Judge.

*Section 163, sub-section (b). The plaint shall contain, in addition to the particulars specified in section 50 of the Code of Civil Procedure, a statement of the situation, designation, extent and boundaries of the land held by the tenant, or, where the plaintiff is unable to give the extent or boundaries, in lieu thereof a description sufficient for identification.*

*Sub-section (c). A written statement shall not be filed without the leave of the Court.*

Sub-section (*c*) should be struck out. There is no reason why the tenant should be placed under any disadvantage in respect of making his defence. It is not at all likely that leave to file written statement will be refused in any case. This little clause will not do any good to any body, but simply put the tenant to the cost of making an application for leave, and put the Court to the trouble of hearing it.

Sub-section (*b*) is equally objectionable on the side of the landlord. In the large majority of estates it will be impossible for the landlord to meet its requirements. The matter was fully considered in the Rent Commission, and the old law was left untouched—see Mr. Field's Digest, paragraphs 149 and 185, and Bill prepared by the Rent Commission, section 167. If you make it compulsory on the landlord to state boundaries in the plaint, you will enable the tenant to raise a foreign issue in the case by alleging that there has been misdescription. It is not desirable that the trial of a rent-suit should be encumbered with an issue, to determine which a protracted enquiry would often be necessary, but which, when determined, would be wholly unnecessary for the decision of the suit. The annual rent of the tenure or holding, and the instalments in which it is payable, are necessary particulars in a rent-suit, and should be substituted for the boundaries.

*Section 166. When a defendant is liable to pay money into Court under either of the last foregoing sections, if the Court thinks that there are sufficient reasons for ordering that the money be paid by instalments, it may take cognizance of the defendant's plea on his paying into Court such instalment as the Court directs.*

The principle of payment by instalments is wholly inapplicable to rent-decrees. There is only accumulation of interest on other decrees for the payment of money, but in case of rent-decrees the debt accumulates with interest and subsequent instalments of rent.

*Section 174. (1) The Court having jurisdiction to determine a suit for the recovery of land held by a tenant, may, on the application of either the landlord or the tenant, determine all or any of the following matters, namely :—*

*(a) the situation, quantity and boundaries of the land held by the tenant;*

*(b) the class to which he belongs,—that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat or under-raiyat, and if he is a tenure-holder, whether his rent is liable to enhancement; and*

*(c) the rent payable by him at the time of the application.*

*(2) If in the opinion of the Court any of these matters cannot be satisfactorily determined without a local enquiry, the Court may direct that a local enquiry be held, under Chapter XXV of the Code of Civil Procedure, by such Revenue-officer as the Local Government, by rule, directs.*

*(3) The order on any application under this section shall have the effect of, and be subject to, the like appeal as a decree.*

The writer does not see that any useful object will be attained by directing that the local enquiry should be made by a Revenue-officer. An experienced officer in the higher grades of the Revenue Department will not conduct this enquiry himself. He will depute an Amín or Sub-Deputy to make the local enquiry, which may be done with equal result by a Civil Court Amín. The passage of a case from a Civil Court to a Revenue-officer will be productive of very great harassment to the parties. It would be far more simple to improve the position and efficiency of the class of officers attached to the Civil Courts and known as Civil Court Amíns. This class of officers is practically self-supporting, and cost the Government nothing. The fees paid by suitors for the employment of such officers in local enquiries cover their pay.

Section 170, relating to forfeiture, and sections 171 and 172, relating to ejectment, do not properly come within the scope of this Review. They are the outcome of changes proposed to be made in substantive law, and not mere matters of procedure.

## CHAPTER XV OF THE REVISED BILL.

### Sale for Arrears under Decree.

The procedure contained in this chapter is somewhat cumbrous, and not likely to work well in practice. When a decree has been obtained for an arrear of rent due on a saleable tenure, it may very well be brought to sale under the especial procedure dealt with in Part I, which, with a few slight alterations, may be easily adapted to sales in execution of decrees for arrears. A procedure for sale and, in fact, procedure for every matter arising between landlord and tenant, should be as simple as possible, and should contain nothing that is not absolutely necessary. To the landlord the application of the especial procedure will make this difference, that there will be a sale-day in each quarter instead of a sale-day in each month; but against it we may set off the manifold advantages of having sales on fixed days in each quarter. There will necessarily be a great concourse of people interested in land on such quarterly sale-days, and larger competition and greater publicity than on sale days spread over twelve months in the year. Publicity is a point of great importance in auction-sales, and is a more effectual safeguard against fraud than the terrors of a future civil suit. The writer would, therefore, humbly suggest that Chapter XV should be re-cast by making the especial procedure applicable to sales in execution of rent-decrees and incorporating therein the following sections of the revised Bill:—

*Section 175. Where a transferable holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to the interests defined in this chapter as "protected interests," but with power to annul the interests defined in this chapter as "incumbrances".*

*Section 176. The following shall be deemed to be protected interests within the meaning of this chapter:—*

*(a) any under-tenure existing from the time of the Permanent Settlement;*

*(b) any under-tenure recognised by the settlement-proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement;*

*(c) any lease of land whereon dwelling-houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship, or burning or burying grounds have been made;*

*(d) any right of occupancy;*

*(e) any right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred; and*

*(f) any right or interest which the landlord at whose instance the holding is sold, or his predecessor in title, has expressly, and in writing, given the tenant for the time being permission to create.*

*Section 177. For the purposes of this chapter (a) the term "incumbrance", used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his holding or in limitation of his own interest therein, and not being a protected interest as defined in the last foregoing section.*

*Section 186. (1) In disposing of the proceeds of a sale under this chapter, the following rules, instead of those prescribed by section 295 of the Code of Civil Procedure, shall be observed, that is to say:—*

*(a) There shall first be paid to the decree-holder the costs incurred by him in bringing the holding to sale.*

*(b) There shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made.*

*(c) If there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom any rent which may have fallen due to him in respect of the holding between the institution of the suit and the date of the sale, but not more than six months after the date of the final decree.*

*(d) The balance (if any) remaining after the payment of the rent mentioned in clause (c) shall upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application.*

*(2) If the judgment-debtor disputes the decree-holders' right to receive any sum on account of rent under clause (c), the Court shall determine the dispute, and the determination shall have the force of a decree.*

*Section 188. (1) When any person having, in a holding advertised for sale under this chapter, an interest which would be voidable upon the sale, pays into Court the amount requisite to prevent the sale,—*

*(a) the amount so paid by him shall be deemed to be a debt bearing interest at twelve per cent. per annum, and secured by a mortgage of the holding to him;*

*(b) his mortgage shall take priority of every other charge on the holding other than a charge for arrear of rent; and*

*(c) he shall be entitled to possession of the holding as mortgagee, and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.*

*(2) Nothing in this section shall affect any other remedy to which any such person would be entitled.*

*Section 189. When a holding is advertised for sale under this chapter, in execution of a decree against a superior tenant defaulting, and an inferior tenant, whose interest would be voidable upon the sale, pays money into Court in order to prevent the sale, he may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord; and that landlord, if he is not the defaulter, may, in like manner, deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.*

*Section 190. (1) Notwithstanding anything contained in section 294 of the Code of Civil Procedure, the holder of a decree in execution of which a holding is sold under this chapter may, without the permission of the Court, bid for or purchase the holding.*

*(2) The judgment-debtor shall not bid for or purchase a holding so sold.*

The next matter for consideration is the scheme for protecting what are termed in this chapter "registered and notified incumbrances." It has greatly encumbered the procedure relating to execution-sales for arrears; but that alone is not a fatal objection. The idea of the scheme seems to have been borrowed from the law relating to revenue-sales (Act XI of 1859). It will appear, however, on close examination, that the conditions of the two sales are materially different, and there is no real analogy between them in respect of the point under consideration. The revenue-sale law allows no compensation for the avoidance of tenures and incumbrances; whereas the rent-sale law contains provisions for the payment of such compensation out of the surplus sale-proceeds. A tenure-holder's right to receive compensation is subject to a very reasonable condition. It is set out in the proviso to section 206 of the revised Bill, and is as follows:—

Provided that no such suit (for compensation) shall be maintainable by any tenant inferior to the defaulter, if at the time of the sale any arrear of rent was due from him.

If the especial procedure be extended to execution-sales for arrears, the holder of a voidable tenure or incumbrance will have the following remedies:—

(1) he may prevent the sale by paying into Court the amount of the arrears, and recover the same as a charge upon the salved tenure (sections 10 and 16 of the Draft Especial Procedure, in Part I);

(2) he may, after the sale, get it cancelled by paying into Court the amount of the arrears and five per cent. compensation to the purchaser, and recover the same as a charge upon the salved tenure (sections 13 and 16 of the Draft Especial Procedure);

(3) he may, at the worst, obtain a money equivalent for the loss of his tenure, provided he himself be not in arrear (section 18 of the Draft Especial Procedure).

The holder of a voidable tenure or incumbrance cannot, in reason and justice, ask for more. He knew very well when the tenure or incumbrance was created that it was liable to be cancelled upon a sale of the parent tenure for arrears, and presumably paid value accordingly. Upon principle also his claim for further protection seems to be wholly untenable. "The rent of every transferable holding shall be a first charge upon the holding" (section 77 of the revised Bill). To sell a holding for the discharge of the first incumbrance, and to allow subsequent incumbrances to remain upon the property seems to be a clear anomaly.

Numerous complications and disadvantages are sure to result from encumbering the procedure relating to rent-sales with rules for the protection of incumbrances. Sales of tenures for arrears will gradually become like sales of rights and interests in execution of money-decrees, which have acquired such fame for producing splendid crops of litigation. Fraudulent tenureholders will be enabled to register *bénámi* leases absorbing the profits of the tenure, and entrap purchasers.. In short, the scheme is not at all likely to work well. It will add to the troubles of everybody, and produce a feeling of insecurity very undesirable in rent-sales.

If this scheme be abandoned, it will elminate the following sections of Chapter XV:—

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|---|---|
| Provisos (*a*) and (*b*) in section 175. | Section 181. |
| Sub-section (*b*) of section 177. | Section 182. |
| Sub-section (*a*) of section 179. | Section 192. |
| Section 180. | Section 193. |

## PART III.

### Procedure in Sundry other Matters between Landlord and Tenant.

*(To follow.)*

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Dated 13th December, 1884.

From—Secretary, Behar Landholders Association, Gya Branch,

To—The Secretary to the Government of India, Legislative Department.

I have the honour to request the favour of your laying before His Excellency the Viceroy and Governor-General in Council the accompanying memorial, with the report annexed there

with, from the landholders of the District of Gya on the Bengal Tenancy Bill. I further beg to despatch by book-post five copies of the memorial and the report therein alluded to.

*To the Viceroy and Governor-General of India.*

The humble memorial of the landholders of the District of Gya,

MOST RESPECTFULLY SHEWETH,—That your memorialists have been greatly alarmed and distressed by the provisions of the Bengal Tenancy Bill, and your memorialists respectfully submit that in spite of the changes made therein by the Select Committee, the Bill, far from improving or ameliorating the condition either of the landlords or their tenants, will powerfully tend to upset their present relations, and disturb the harmony which has hitherto generally existed between them.

2. That your memorialists beg respectfully to invite your Excellency's attention to the strange situation of the so-called landlords in this province under the laws at present in force. Their lands are subject to a summary sale law for arrears due to Government, and even their persons to arrest and imprisonment, under a summary certificate procedure law, and this for public demands upon their lands, not due by them but by their tenants, while for the realization of their rents they are obliged to have recourse to the cumbrous, dilatory, and costly procedure of regular suits in the civil courts. The injustice of this state of things has long been recognized, and so far back as the year 1876 a revision of the Rent Law, with a view to afford to the zemindar greater facility for the realization of his rents, was thought a pressing necessity. Your memorialists respectfully submit that the present Bill not only fails to provide any facility for the realization of rents, but by taking away from them the imperfect power of distraint which Act X of 1859 gave to them, will leave them in a more miserable position than before.

3. That your memorialists respectfully submit that the nature of ryotty tenures in this district, owing to the natural features of its land, differs radically from that of other districts in Bengal, and that the provisions of the Bill regarding settled ryots, right of occupancy, enhancements of rents, transferability and subletting of the right of occupancy, improvements and management, are quite unsuited to it, and will prove subversive of long established and customary rights of both parties, and most harmful both to the landlords and ryots of the district.

4. That no cultivation is possible in the district without the combined efforts and capital of both the landlord and ryot, and it is the bhowli tenure alone, under which both share proportionately the profit and loss under the effects of good and bad seasons that has encouraged them to join their labour and capital in the work of agriculture. The tenure benefits the landlord because, without the trouble and expense of enhancement, it enables him to get a just return for any labour employed or capital spent by him upon the improvement of the soil, and secures to him the prompt and punctual realization of his rents, while it benefits the ryot, since he has no rent whatever to pay on failure of the crops, which is an ever-recurring evil in the district. Your memorialists and their tenants naturally hoped that a tenure such as this, beneficial to them both, would receive all possible encouragement and support which the Government could give it by legislation; and it is disheartening to find that the present Bill aims at destroying it altogether. Your memorialists beg earnestly to submit that both they and their tenants look upon the provisions of sections 58, 81, 82, 83, and 220C of the Bill which they apprehend would have the effect of annihilating this tenure as the greatest misfortune and calamity that could befal the district. Such legislation was never desired either by landlords or ryots, and your memorialists respectfully solicit Your Excellency's pardon for saying that no justification for these provisions is to be found in the remote and delusive hope that the commutation of the rent now paid in kind into money may possibly increase the produce, and consequently the wealth of the country. The fear of your humble memorialists and that of the local authorities, based upon exact knowledge of the conditions under which cultivation is carried on, is that the result of such communication would be purely calamitous to the district and to the country.

5. That with the kind permission of the Collector of Gya, your memorialists beg to annex with this memorial copy of an official report on the Bengal Tenancy Bill, submitted to him by Babu Bhoop Sen Sing, Senior Government Pleader of Gya, and to solicit Your Excellency's kind attention to the several points therein discussed, as showing how injuriously the provisions of the Bill would affect this district.

6. That in conclusion your memorialists beg most respectfully to submit that, so far as they have been able to understand the provisions of the Bill, they believe that the passing of the measure into law would practically confiscate the rights which were guaranteed to them by the solemn promise of Government in the proclamation which imposed the permanent settlement upon them, and disturb the peaceful relations which have hitherto existed between the landlords and their tenants. A general confiscation of rights, so long recognized by such revolutionary means as the Bill contemplates, will not, your humble memo-

rialists fervently hope, commend itself to Your Excellency's just and benevolent Government; they respectfully pray that Your Excellency will be graciously pleased not to allow the Bill to be pased into law.

And your humble memorialists, as in duty bound, shall ever pray.

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No. 42, dated Gya, the 13th July, 1884.

From—Babu Bhoop Sen Sing, B.A. & B.L., Government Pleader, Gya,
To—The Collector of Gya.

I have the honour, as directed by you, to submit my report on the Bengal Tenancy Bill, as revised by the Select Committee, with reference to the remarks contained in Government of India's letter No. 784, dated 5th May, and Bengal Government's letter No. 3T.—R., dated 24th May 1884. I regret that various other engagements, the voluminous papers connected with the subject which I had to go through, and ill-health prevented my submitting the report as early as I had intended to do.

2. The subject of the Bill is one of extreme difficulty and of the highest importance; and although my opinion thereon may, I am afraid, be not worth the paper it is written upon, yet in obedience to your order, I venture to put before you the conclusions which I have arrived at in consultation with those who take any interest in the matter, and after a careful consideration and discussion of the different questions raised in the Bill and the Report of the Select Committee.

3. Complaints from the actual cultivators of the soil that though the law had secured to them valuable rights in the land and given them protection from duress, illegal distraint, exaction, withholding of receipts, and arbitrary ejectment and enhancement, the patwari's *basta* changing and changeable at the will and pleasure of an unscrupulous landlord, and the costly and cumbrous procedure of the civil court which would keep them hanging about it oftener at times when they could more advantageously be employed in their fields, prevented them from asserting their rights, and compelled them to remain quiet at the mercy of the landlord; and on the other hand, equally just appeals from the landlords for protection from frequent agrarian disturbances and combination of tenants to withhold and resist the payment of rents; their repeated complaints that the law was weak and feeble to assist them in the exercise of their right of enhancement, and above all their loud cries for justice and fair play that, while their estates were liable to summary sale under the sunset law, and the summary certificate procedure for Government revenue, and other public demands upon lands, not only payable by them but by their tenants as well, for their own just dues, they were to maintain the highly expensive and dilatory procedure of regular suits in the civil courts, pending the decision of which their estates would either be sold or pledged at exorbitant rates of interest, pressed seriously upon the attention of Government, the necessity and justice of revising and re-casting the existing law. Both the parties expected the revised law to give to each the relief and protection he wanted against the other. The zemindars expected a summary and simple procedure for the realisation of their rents, facility for, and enlargement of the grounds of enhancement, and safe and secure enjoyment of all the emoluments, present and future, to which they were entitled by law without any curtailment. The actual cultivators of the soil in their turn expected an easy, speedy, and less costly procedure which would enable them to hold their own, and protect themselves from improper encroachment upon their rights and emoluments by a ruthless and unscrupulous landlord. An impartial lover of justice and fair play, acquainted with the wish and advice of the legislature, repeatedly expressed and made known from the time of the permanent settlement, that neither of the parties should look upon the other as hostile in interest, and that both should live in peace and harmony, working for their common weal and benefit, and for the improvement of agriculture upon which depended and depend the wealth and prosperity of the country, would naturally expect the revised law to take away nothing from, and add nothing to, the vested rights of both parties. Every one expected that the revision of the law, so earnestly desired by both landlords and tenants, would bring on peace and harmony between them, and inculcate upon each to love and regard the rights of the other as his own. But the present Bill, in its present form, forgetting the original complaints of both the parties, ignoring the reliefs they respectively prayed for, and declaring and creating new rights to the great detriment of the old and vested ones, would throw both the parties into a turbulent and boisterous sea of litigation, there to be wrecked on the rock of ruin and starvation.

4. The above is the impression which a close and careful perusal of the Bill, chapter by chapter and section by section, has left upon my mind, as well as upon the minds of those in this district, who have read it with some interest. So far as our district is concerned, the Bill is quite inapplicable and unsuited to its peculiar circumstances and its time-honored tenures, which do not seem to have been properly represented to the Members of the Council, or which appear to have escaped that amount of careful consideration which the importance and peculiar nature of such tenures absolutely demand.

5. Hilly tracts, sandy lands, and absence of navigable rivers make the relation of landlords and tenants, and the tenures themselves in Gya, very different from what they are

elsewhere, and legislation congenial to any other part of the country is and must necessarily be quite unsuited to this part of Behar. The nature of the soil and the physical features of the district make any improvement in agriculture, nay cultivation itself, without the cordial and combined efforts of both the landlords and the tenants, a matter of exceptional difficulty, if not of utter impossibility. In this district the capital of the landlords and the labour of his servants and those of the ryots have kept agriculture and cultivation a-going. The rivers and streams in the district, being dry all throughout the year, except during the best rainy season, every village has to maintain a large and extensive system of irrigation, in the shape of ahars (reservoirs) and pynes (artificial watercourses), at very heavy costs which are all borne by the landlords alone. The number of cases, both civil and criminal, in connection with water disputes, which crop up every year in this part of the country, and in which the landlord alone figures and bears the whole expenses of litigation, with all its concomitant evils and troubles, will satisfy the legislature that the Gaya zemindar, even where he is rack-renting and tyrannical, considers his interests as identical with those of his ryots, and is always ready to help them with men and money for their own welfare as well as for the improvement of agriculture. Any one unacquainted with the state of affairs in this district, and visiting any of its agricultural villages at any time during the months from July to September, will be struck with surprise at the strange sight of the zemindar, the rich by his servants, the poor himself, regardless of sun and rain, not unfrequently without an umbrella over his head, supervising the putting up, with his own money, of dams in rivers, cleaning the beds of pynes, conducting waters from place to place, filling up reservoirs with them, running from field to field, to see the proper distribution and economical use of the waters, so brought to the village, with hard labour and at heavy costs.

6. It is not unfrequently that the land lord, in hard years, supplies his ryots with seeds (*bihun*) and food (*khaihun*), to be returned to him within the agricultural year, with interest, at 2 annas per rupee a year, which is equivalent to 12½ per cent. per annum. But cannot the ryot do all these himself without the aid of the zemindar? My answer to this question would be an emphatic *No*. It is impossible for him to maintain the village reservoirs and the intricate water-courses, which are so many arteries and veins of vital fluid, supplying the life-blood to its whole agricultural community. But why? Because, in the first place, his holding being scattered in small plots and patches all over the village area, many at considerable distances from the ahars and pynes, he will not think it worth his while to spend any money upon the construction and repairs of the common reservoirs and water-courses; secondly because he has not the means, nor has he any credit with money-lenders, to raise the required sum by loan. Thirdly, because, in the present state of the country, the habits of the people, their ancient and inherited mode of thinking and their want of confidence in each other, so natural in monetary transactions among the ignorant and illiterate mass to which the majority of the cultivators belong, would make combination and raising up of subscriptions among themselves, creation of a joint common fund and the appointment of trustees for the proper management of such a fund, any thing but practicable within the bounds of possibility. Fourthly, because assuming even for the sake of argument the possibility of the creation of such a fund and the appointment of such trustees as aforesaid, the mob would be without a lead, and each ryot having paid for the common reservoirs and water channels, would claim the priority of irrigating his fields, and try to assert his rights or supposed rights, by means fair or foul, which would often lead to serious affrays resulting in the breaking of bones and shedding of blood, and sometimes terminating in murders and manslaughters. If not this, there would certainly be surreptitious cutting of reservoirs and diverting of channel-waters, by a ryot whose single field of a few kuttahs in some remote corner of the village land is drying up at a time when the whole village requires to keep them closed or in their proper course as the case may be, and thus all the water might be wasted to the immense loss and injury of the rest of the ryots. I might add here, as the result of many years' experience, that in joint estates, owned by several proprietors, irrigation works suffer a great deal for want of co-operation and union among themselves, in carrying out such works for the benefit of such joint estates. But the proprietors who were indifferent and careless when the estates were joint, would no longer appear to be so when the estates are partitioned. After partition has been effected and the lands marked out, the first thing that the proprietor of each plot takes up is the irrigation-work of his plot for which he spares neither pains nor money. In this district there are numerous pynes known under the name of *Dasains*, running over several miles with numerous branches held in common by several villages. One of these from the Jumna river runs over more than 12 miles and irrigates about 60 villages, containing in all upwards of 10,000 cultivators; and if pynes like these were left in charge of the ryots, the result would be what can be better conceived than described, proving itself extremely disastrous to the ryots themselves and ruinous, to the cause of cultivation. The last, but not the least, reason is that the reservoirs and water-courses are subject to constant litigation between neighbouring villages, and have always been a fruitful source of serious riots and affrays. The cases, whether civil and criminal, thus cropping up require to be carefully conducted and properly managed, as upon their results depend the prospects of both the landlord and the tenants. It is highly desirable that the management and the looking-after of such cases should be entirely in the hands of that party which possesses better intelligence and superior understanding. There can be no doubt that the landlord is better than his ryots in point of intelligence and understanding. In the present state of affairs, the reservoirs and the water-courses are maintained at the exclusive costs of the landlords, who keep a vigilant watch

over them and exclusively control their opening and closing up. No ryot ever ventures to open them without his landlord's permission, which is never withheld unless when it would be injurious to the interests of the majority of the cultivators.

7. Having shewn the physical impossibility of making any improvement in agriculture, nay of keeping up cultivation in this district, without maintaining costly reservoirs and water-courses, and having also shewn that these cannot be well kept up and maintained by the ryots, individually or collectively, and that they have, from time beyond all legal memory, been kept up exclusively by the landlords at their own expenses, I next proceed to shew why the landlords have undergone, and are undergoing, so much troubles and expenses for their ryots. The preamble to Reg. II of 1793 desired both land lords and tenants to keep them on. Enhancement suits in Gaya have not been heard of. In fact, during my comparatively extensive practice at the Gaya Bar for the last 14 years, I never had a single enhancement suit to conduct or defend. Is it that the landlords have been making enhancement by underhand means and illegally out of Court? Doubtless, the Reyan class (the cultivators of inferior orders) who plough with their own hands and never engage hired labour, look upon their zemindar, not only as the lord of the land they till and cultivate, but as a divine being; and with them the landlord may do whatever he likes. Wallowing in the mire of ignorance, living from hand to mouth, and spending all their savings in the grog-shop, the cultivators of this order confound their *Gowan* (landlord) with their *Bhagowan* (God), against whom they will not and cannot go to Court. But the landlord's task is not so easy, nor his position so sacred and awe-inspiring with the superior class of cultivators, the Brahmans, the Babhans, the warrior and other classes who cultivate their lands through their servants or hired men and who form the bulk of the cultivators of this district. Many of these are the descendants of the proprietors of byegone times, and consider themselves by birth and in position, equal, if not superior, to their landlord. They are quarrelsome and litigious, and without fight, they would not yield an inch to him. They are a terror to him instead of he being a terror to them. He has met with difficulties and obstacles in realising his just dues from them, and it cannot possibly be maintained that he could enhance their rents so easily and quietly, without the aid of Court. The records of the Civil and Criminal Courts here will shew the number of cases and complaints that were and are brought by the cultivators of this class againts their landlords, as evidence of the fact that they would resist with all their might any, the least, attempt at an arbitrary or illegal enhancement. If the landlord has not been able to make enhancements in or out of Court, why, it may be asked, has he been spending so much money and undergoing so much trouble for his ryots and for the improvement of agriculture? My answer to this is that the nature of the ryoti tenures in Gya is such as would enable him to get a return and reward for his money and labour, without the necessity of enhancements, legal or illegal, and that his neglect to keep on these works of irrigation would cause loss not only to his ryots but to himself as well.

8. This brings me to the consideration of the tenures of various descriptions that prevail in this district. The first and the foremost among them is the Bhowli tenure, under which the greater part (more than four fifths) of the cultivated lands here are held. Its distinguishing feature is the payment of rents in kind, not in any fixed quantity but in a fixed proportion on the actual outturn of the crops grown. The rent paid or payable accordingly varies from year to year. The land is tilled and the seed sown is supplied by the ryot or at his cost—the costs of hoeing and transplanting, of weeding and clearing being also borne by him. But the water is supplied by the landlord at his own cost. The costs of gilandazi, throwing up of earth, division of lands into plots, by *ars* and *urils* (ridge-walls) according to their levels, for the storage of the necessary quantity of water, and of erecting embankments on the banks of rivers for the protection of the villages from being over-flooded, are exclusively paid by him. In dry years when water cannot be supplied from rivers and village reservoirs and artificial water-courses, he pays the ryots the costs of sinking wells. It is not only that the landlord supplies water for irrigation, but as the rise or fall in his income depends upon the increase or decrease in the produce of the lands, he naturally shews as much anxiety and takes as much care in the proper and timely ploughing thereof, as he would have done had he been a cultivator himself, and his servants are always found to be busy in superintending the tilling of the soil, the sowing of the seeds, the transplanting of the crops, and so forth according as the case may be. If the ryot's bullock happens to die in the ploughing season and the ryot is unable to procure one in its stead, the zemindar would come forward and help him with one, even at the risk of running into debt, if he is poor. Seeds are also supplied by him in the same way. For similar reasons, the landlord is interested in seeing that the best crops are grown upon the land it is capable of producing. No ryot has the right to sow any crop inferior to what the land is capable of producing, nor can he be allowed, without the express consent of his landlord, to grow crops which, by the custom of the country, Nekdi rent is paid for, or which is incapable of being appraised or stored in the *Khalihan* for division. From the time the crops are sown to the time they are appraised and stored, the landlord watches the crops with keen interest and protects them from being wasted or otherwise injured by men or cattle. For this purpose he has to maintain an establishment of Barahils and Goraits, the former of whom receive their salary from the zemindar and a share in one of the *abwabs* called *mangan*, while the latter are remunerated by the zeminder with *Jaggir* and *Pawbhi*, as well as with a share in the *notcha*, an abwab which will be described

hereafter. This kind of tenure, it may be remarked *en passant*, is a peculiar one and has not its like any where else either in Asia or Europe; and it would be a mistake to compare it with the European metayer system and to condemn it as having all the evils of that system without any of its advantages.

9. It would thus appear that in the rearing up of the crops, the capital and labour of both the landlord and the ryots are employed. The crops in the fields remain in charge of both. Both have vested rights in the land, and I fail to see why the crops should be considered in the possession of the ryot any more than in that of the landlord. Under the circumstances, both law and equity would consider not only the land, but the crops as well, as the joint property in joint possession of both. Such has always been our legal conception of the rights of the parties with regard to the possession of the crops. Both the ryots and the landlord have, from time immemorial, dealt with the crops of Bhowli lands as their joint property Neither party ever believed, nor does it even now believe, that the one can touch or remove the crops of Bhowli lands without the consent or permission of the other.

10. Having thus pointed out that the Bhowli crops are, by custom and the circumstances under which they are grown, regarded by the parties concerned as their joint property, we proceed next to ascertain what, under law and the said custom, have been the respective shares of the parties and how each has been taking and enjoying its share. The whole of the straw and the chaff, which are not without value, goes to the ryots. It is only out of the grain-produce, that the zemindar gets a share which, though every where more than half, is different in different pergunnahs, and almost in different villages, and which again varies with the different classes of ryots, whether *Reyan* or Surfa, the former delivering a higher and the latter a lower share; and we shall be very near the true figure, when we state that the zemindar's share, with the customary abwabs, is $\frac{8}{16}$ of the grain-produce. But if the value of the straw and the chaff which are in these days, as much valuable commodities as grains, be taken into consideration, the highest share which the zemidar gets in lieu of rent, would be much less than even half of the total gross produce. The value of the straw and chaff may fairly be assumed to be one-third of the grain-produce. It has been stated to me by cultivators that ordinarily 100 small bundles or 4 men's load of paddy would yield one maund of rice; and if the rice be sold for one rupee this straw might be sold for 4 annas to 6 annas. Thus out of the total gross produce of Rs. 21, while the zemindar would get Rs. 9, the ryot gets 12. I cannot vouch for the exactness of the figures given above, but I am assured by both zemindars and ryots that they can be taken as the basis of a fair comparison of the values of their respective shares in the bhowli crop. Paddy being the principle produce of bhowli lands, it would not be out of place to allude here to the proverb which is so common both among zemindars and ryots of Behar, *viz.*, "*sab dhan sarhe basis pasari*" all paddy twenty-two and half pasaris (one-eighth of a maund)." Twenty-two and half *pasaris* out of forty *pasaris* would correspond exactly with $\frac{8}{16}$ share of the landlord in the grain-produce of the bhowli land.

11. The mode in which the two parties take their respective shares of the crops is either by *Dana bandi* (appraisement) or *Agorbatai* (apportionment). I have already said that in the fields the crops are watched and protected by both the parties, neither of whom can touch them without the permission of the other. As soon as the crops are ripe for harvesting, the zemindar deputes an *Amin* (assessor) and a *salis* (arbitrator) to make an estimate of the grain-produce. In the presence of these officers, the ryots, the village *gomasta*, the patwari, and the *jeth* or the principal ryot, who generally knows to read and write, representing and watching the interest of the ryots; the village chainman called *Katha dhar* (holder of wood or bamboo) measures the field with the village bamboo which in this district is nowhere less than 8 feet, 3 inches, or more that 9 feet in length. The *salis* then goes round the field, and from his experience guesses out of the probable quantity of the grain in the fields, holds a consultation with the amin and the village amlas, and when the quantity is unanimously agreed upon, it is made known to the ryot. If he accepts the estimate so arrived at, the quantity is entered by the patwari in the *khasra* or field-book. If he objects, other ryots are called in to act as mediators, and if they fail to convince either party, a *partar* or test takes place. On behalf of the landlord, a portion of the best part of the crops is reaped, and an equal portion of the worst part is reaped on behalf of the ryot. The two portions so reaped are threshed and the grain weighed. On the quantity thus ascertained, the whole produce of the field is calculated and entered in the *khasra*. From the time the estimate is made, the zemindar withdraws his connection from the crops which are then left in the exclusive charge and possession of the ryots but their (the ryots') interest therein until reaped is still carefully watched by the budhwara or the watchman and the other village establishment. After the appraisement of the field, the ryot is allowed the full liberty of reaping the crops and taking them home at any time that may suit his convenience. Out of the estimated quantity, a deduction at the rate of two *seers* per *maund* is allowed to the ryot, which is called *chhut-ti* (let off.) I have not been able to ascertain the exact reason for which this allowance is made to the ryot from the joint quantity of grain. There has been a diversity of opinion on this point. But as in the *Agorbatai*, the reapers who also thresh out the grains are paid from the joint crop, I presume this is allowed to the ryot to meet the cost of reaping, gathering, and threshing. The landlord's share is then calculated on the quantity left after the *chhut-ti* has been deducted. The total quantity thus left is then equally divided, to the one-half is added what under the name of *daheak*, *neg*, or *abub*, is called the bhowli pattah which, as already stated is different in different places and

with different classes of ryots. But so far as I have been able to ascertain from records of rent suits and from my own personal knowledge of my own estates, as well as from other zemindars and the ryots, this *daheak* is in no case less than 1¼ seers or more than 4 seers per maund calculated on the other half. To this being added the *pansera*, the *nocha*, the *badkwara*, the *partal* and *mauserhi* of which I shall speak hereafter under the heads of abwabs, the zemindar's total share would come to, in some cases, a little less, and in others, a little more than $\frac{9}{16}$ which is called the *ain* as distinguished from the nakdi-rent called the *mal*. The word *ain* means "something" and as a matter of fact the landlord gets his share in the same kind of crops that are grown in the field.

12. Under the *dana-bandi*, the ryot is bound to deliver the zemindar's share at the kutchery; and if the grain is spent or otherwise used by the ryot he is charged with money value of the grain so spent or used. If the parties do not agree to *dana-bandi*, the crops are reaped under the supervision of both, and gathered in a common threshing floor, called *khalian* where too they are carefully and strictly watched by both the parties. Threshing does not take place until the whole crops of the village have been thus gathered in the *khalian*. Neither party is allowed the use of the crops which remain in the joint possession of both, till the grains are threshed out, weighed and divided. During the reaping period, the ryot, at the end of each day, gets what is called *lorha* (the ears of corn accidently dropped at the time of reaping) and *dehowra* and *chhokowti*, in certain varying proportion in every village and perganah, as daily wages of the reapers. From the joint crops, the village barber, washerman, potter, blacksmith, carpenter and the tanner who have worked all the year round for the ryots and occasionally for the zemindar, receive their fixed *bojhas* (bundles) and *panjas* (half bundles) in lieu of which in *dana-bandi*, it is said, some of them pluck the ears of corn from the fields at the time of appraisement. When the heap of grain is ready for division, the grain which is blown away with the chaff, is all left to the ryot, and is commonly known by the name of *agar*. Then again out of the common heap, certain fixed proportions known by the name of *agaoon* (offering for family God,) *bishun pirit* (offering to priest) and *bhut kuri* (spirit's share,) are set apart in honor of the family and village gods of the ryots, and are given to the ryots for holy purposes. Out of the grain thus left in the heap, the zemindar gets his share and what is left at the bottom of the heap, mixed up with dust and is called *tari*, is all left to the ryot. The *tari* and the *agar* too are allowed in a fixed proportion, so also the *agaoon, bishun pirit and bhutkuri*. The fees of the village amlas are also paid from the joint heap. This system is called *agorbatai*. The items mentioned above, are not allowed in the Danabandi system, as the ryot, there takes the chance of the rough estimate, by way of contract, which is less troublesome and may give him more than *agorbatai*.

13. The *agorbatai* has the appearance of more fairness than the *danabandi*, but is disliked by both landlords and tenants. By the landlords, because it entails upon him a great deal of trouble, and by the tenant, because it prevents him from using and enjoying the produce of his fields in proper time and keeps him under the suspicion of the landlord's servants and leads to friction between them. There is also a good deal of wastage in the *batai*, as the parties hurry over the reaping. The crops which under the *danabandi*, would go to the ryots house, in the months of *Poos* and *Magh*, at the latest, cannot, under the *agorbatai*, with all possible haste, be divided and removed from the open *khalian*, till the end of *Fagoon* or the middle of *Chait*, at the earliest.

14. It would thus be very clear that the straw and chaff all going to the ryot, and he taking, at least $\frac{1}{10}$ of the grain produce in the shape of *chhut-ti* in *danabandi* and of the several items, alluded to before, in *batai* from the joint heap of grain, and the zemindar's highest share being $\frac{9}{16}$ of what is left after due deductions, as detailed above, there could be no ground for the remark, once made by the Bengal Rent Commission, that the bhowli tenant who pays as rent so much as half the produce must have the option of cultivating only so much of his holding as he likes, especially when the zemindar pays out of his own share, the costs of the establishment so essential for the interest of both, and has to meet the enormously high expenses of supplying water, erecting embankments, &c., I have tried above to give as full, faithful, correct and accurate an account of the bhowli tenure, with all the main and important incidents of this peculiar tenure, of a peculiar nature; of the rights and liabilities of the parties thereunder and the mode of its working, as, with my limited knowledge and local experience, I could. However, ill-featured and ugly, looking as a relic of primitive ages long gone by, and, however, cumbrous and unmanageable, in practice, it may appear to the civilized people of this enlightened age, to the people of Gaya, at least, it presents a quite different and more agreeable and attractive aspect, as a tenure which is and has always been, the source of the greatest blessings to them. If it were not for this tenure, poor as the people of this district are, they would surely have been far worse off. Having to pay, as rent, only a definite and fixed share in the actual out-turn of his fields, and nothing more than that, if there be a failure of crops, whether total or partial, an event which is of very frequent occurrence in this part of the country, the bhowli tenant has never felt and will never feel the rigour and horror of famine and scarcity so much as his nakdi neighbour who has not only to provide against starvation, but to meet the relentless demand of his unsympathetic landlord for rent which he must pay whether there has been a total or partial failure of crops. I may here state, without fear of contradiction, that no system of tenure could be more advantageous and beneficial to the tenants who are generally so thoughtless and improvident in a country where famine and

scarcity pay periodical visits, than the one, like the bhowli, under which the liability to pay rent varies with the variation in the rainfall and grain-produce of the land. In famine and in years of scarcity a nakdi ryot may be, and as a matter of fact is frequently, compelled to pay rent by selling his holding and sometimes his cattle and homestead too, but not so the bhowli tenant, not even for the road and public works cesses, which having been assessed upon the estate will be paid up for him by his landlord, who will not recover those Cesses from him, as the ryots liability (*vide* Section 41 of IX of 1880) depends upon the rent payable by him, and as failure of crops will relieve him from his liability to pay rent he will be relieved of the cesses also. The tenure is not beneficial to the landlord inasmuch as it enables him to promptly realise his rents without the trouble and harrassment of a suit or without distraint, legal or illegal, and as it enables him to give immediate return of any capital or labour spent or bestowed upon land improvements, without the expenses and embarrassments of enhancement suits. The paucity of rent-suits between landlord and actual cultivators in the districts and the total absence of enhancement and abatement suits, are due entirely to the nature and incidents of this tenure. If it is desirable as the declared policy of every civilized and enlightened Government undoubtedly is and has always been from the time of the Roman Republic, that it is to the interest of the people that litigation should cease, it is nowhere more desirable than among the agricultural classes of Behar in general, and of Gaya in particular, who proverbially poor as they are, would better and more advantageously spend their savings on agricultural improvements than squander them away in litigation which brings them no earthly good in return, but heartburning, distress and destitution. And no tenure is so pre-eminently well constituted and calculated to work as an effective bar to such litigation, as bhowli tenure unquestionably is with all its so-called ugly features and relics of primitive ages. Devoid as the district of Gaya is of all those resources of agriculture which nature has so bountifully bestowed upon the more favoured parts of the province, what tenure can be more suited to the soil and congenial to the people of the district than the one which would encourage the landlord to lay out all his capital and spend his energy and intelligence, to supply, by human skill, art and labour, and would thus give an impetus to the progress of the agriculture which is so devoutly wished for by all. This the bhowli tenure certainly is. The fear of loss, if the landlord neglects or omits to maintain the irrigation works and to attend to the improvement of the land and the hope of gain of which he is sure, if he directs his attention and energy to, and spends his capital upon them, have both combined to operate as a good and stimulus to unite his capital and care with those of his tenants for the benefit of agriculture. It will I trust, be now conceded that this tenure being so beneficial to both landlords and tenants and being so favourable to the cause of agriculture, requires all the support which a benign and benevolent Government can give by legislation. But it is a matter of deep regret that such an important and beneficial tenure escaped the notice and consideration of the legislature, from the commencement of legislation by British Government in Bengal, and it is really painful to see that the first attempt at legislation in this direction, aims a deathblow to this tenure which have survived all the vicissitudes and revolutions that time has wrought. But I confess that this tenure, like all others, has been, in its working, attended with abuses which are attributable more to the neglect of the legislature to give in protection for upwards of a century than to any inherent defects in the tenure itself. All that was required to be secured and protected by legislation was (1) to provide for a timely reaping and enjoyment of the produce by both parties, (2) to secure fairness in *danabandi* in time of dispute, (3) to preserve a proper record of appraisement and division when they were on good terms in order to prevent future disputes and institution of false suits and setting up of false defence, regarding such appraisement and division, that is to say, that if the landlord had made an *agorbatai* he might not be able to see on the allegations of a *danabandi*, and similarly if the ryot had accepted a *Danabandi* and enjoyed the crops, he might not be allowed to set up a defence of *agorbatai*, (4) to prevent the ryot from neglecting the proper and timely cultivation of his fields, (5) to prevent each of the parties from forcibly and surreptitiously removing the crops from the fields or *khalyans* to the detriment of the rights of the other; and (6) if practicable to define the respective shares of both parties in produce. But in my humble opinion the remedy which the Bill provides is worse than the disease. This brings me to the consideration of the different provisions of the Bill regarding the bhowli tenure, at the outset of which, I might say that matters connected with this tenure which urgently required legislation, in order to protect the rights of the parties and to improve and to strenghthen its working, have not received that amount of consideration which their importance demanded. The provisions of the Bill regarding this tenure are to be found in sections 53, 81, 82, and 83, section 53 gives a right both to an occupancy ryot and his landlord, to effect, by application to the Collector, or any settlement revenue officer, a forcible conversion of the bhowli tenure into a nakdi one. This provision, revolutionary as it is in its character, is altogether new and uncalled for as neither the landlord nor the tenant ever demanded it. Instead of improving the position of either the tenant or his landlord, the section would involve them in those heart-burning disputes regarding enhancement and abatement, which have hitherto been altogether unknown. Besides it is open to the objection that it encroaches upon the rights of both the parties. The zemindar has enjoyed, from time immemorial, the right of availing himself of the increase in the yearly produce of the land and of the rise of the market value of the grain, and thereby profiting himself by such increase and rise, while the ryot, on the other hand has enjoyed the privilege of paying no rent at all when there was total failure of the crops, or of paying such rent only as the actual produce of the land would permit in

certain fixed properties already alluded to before. This provision would thus be very distasteful both to the landlord and to the tenant, and would be looked upon with distrust as it might be used by either of them as a handle to harass the other, under circumstances which may chance to be favourable to the one and unfavourable to the other. An ease-loving and indolent zemindar, would only be too glad, if he be able, to force upon his tenants a fixed money-rent, thereby relieving himself of the duties and care of a bhowli landlord. Similarly a well-to-do ryot, who, having other sources of income, does not care for the cultivation of his land so much, and happening to entertain some ill-feelings towards his landlord, would not scruple to take advantage of this section and by inducing other ryots to join him, to use it against a hard-working and active zemindar who spares neither pains nor energy to improve the agriculture of his estate, and thus to reduce his income and emolument even below the liabilities which his estate is subject to. However, at the same time, I must candidly confess, that this ancient and time-honored tenure, held as it is in high estimation by both landlords and tenants, in this part of the province, would render this section a dead letter with those landlords and tenants who, mindful of their interest and anxious to improve the agriculture, never consider the interest of the one as clashing against that of the other, and always work and co-operate with one another for the furtherance of the cause of cultivation. But it may be argued that if the section would remain inoperative as a dead letter, why raise any objection to it? To this my answer is, that if the section be allowed to stand on the statute book an unscupulous landlord or a revengeful ryot will ever try to use it as a weapon to injure the interest of the one or the other, as the case may be. Then again the commutation of the bhowli tenure into nakdi one is surrounded with many difficulties. The principles laid down in clause (4) of the section, for determining the sum to be paid as money-rent, are neither so easy nor practicable as they might appear at first. The bhowli and the nakdi lands are so situated in any estate in this district and are so different and dissimilar with each other in their productiveness and the kinds of crops grown upon them, that it would be very difficult, if not impossible, to determine the money-rent of the former by the light of that of the latter in the vicinity with any degree of fairness to the emoluments of the parties concerned. It may here be observed that in this district, nakdi rent is fixed upon crops grown on the land and in the majority of cases it was fixed with reference to the crops then grown, at a time when grains were so cheap for more reasons than one, that it would be very unjust and hard upon the zemindar who has never altered the nakdi rent of his estate to compel him to convert his his bhowli into a nakdi estate, on the principle laid down in sub-clause (*a*) of clause (4) of this section which would reduce his emoluments to at least ½ or ⅓ of what it at present and the bhowli system is. Then again how ruinous it would prove to the interest of a ryot the rent of whose Nakdi land, or of that of his neighbour, has of late been enhanced by a a rack-renting and unprincipled landlord, if he be forced to pay money-rent for his bhowli holding determined on the principle referred to above.

15. The principle laid down in sub-clause (*b*) which contemplates the determining of money-rent of of bhowli lands, on the average value of the rent actually received by the landlord during the preceding ten years, is as untenable and impracticable, as the other. "The preceding ten years" may either be a period of uninterrupted prosperity and plenty of crops in the agricultural community or just the reverse. If the former, the ryots are ruined in hard years, if the latter, the landlords are ruined for ever. But the difficulty is how to ascertain the average value of the produce for the preceding ten years.

16. Where to find a faithful and trustworthy record of the actual produce of the lands during that period. Can any reliance be placed upon that perennial spring of mischief, the patwarie's basta. for such a record, after what has repeatedly and strongly been said of it from every quarter? Will a dishonest and intriguing landlord ever scruple to fall back upon it, for the purpose of showing that the lands, during the preceding ten years, produced more than what they actually did, and can any ryot be safe from being rack-rented, if his holding is made a victim to that strange and fearful basta, which on the other hand may as well be turned against weak and honest zemindar, by the ryots combining and colluding with the patwari. Instances of such collusion with the patwari being not rare.

17. Thus both the principles for commutation of rent payable in kind as laid down in the Bill being open to serious objections in other principle or principles can be possible or practicable under the peculiar incidents of the tenure paying rent in kind. Even the wise suggestions made with regard to section 53 by the Hon'ble H. J. Reynolds in his memorandum of dissent is far from being sufficient to make the section free from any of the objections that I have ventured to point out in the foregoing paras.

18. With all due deference to the opinion of such an able, wise, learned and experienced legislator, I humbly beg to submit that while those suggestions seek to protect the interests of the ryots, they fail to extend that degree of protection to the interest of the landlord which justice and fair-play entitle him to. Altogether ignoring the material injuries which the interests of the landlord would suffer if this section be allowed to stand as it is, and be fully taken advantage of by vindictive and unscrupulous ryots, the suggestions proceed further to shape the section in such a manner as would undoubtedly make it exceedingly objectionable in the eye of every bhowli landlord, as it would stand in the way of all his future prospects and legitimate emoluments arising out of his personal exertions and care to improve the agriculture of his estate. The proposal that the money-rent should not in any case exceed

the rental at which the holding is entered in the landlord's road-cess returns may, at the first sight, appear to be just, but a little careful consideration would at once show that the basis on which the proposal is made is anything but just and fair to the landlord. For it is well-known that these road-cess returns are not what they profess to be and are far from being true and reliable. These returns were made at a time and with motives which would at once render them quite unfit, if not utterly unsafe, to be treated with any degree of weight or importance. These returns invariably underrate the actual rentals to which they relate as they were made with interested motives. It is not the object of the present Bill to punish the zemindar for what he might have done long ago; and yet it is proposed to inflict a heavy penalty upon him for the returns being not what they ought to have been. In many cases the zemindars who made them are no longer in possession of the estates, and in accepting the rental entered in them as the maximum limit of money-rent for a bhowli holding the income of such zemindars would not only be lowered, but it would be punishing them for the faults of those upon whom they could have no control. Even assuming that these road-cess returns are correct, they cannot and ought not to be taken into consideration in calculating the money-rent of a tenure paying rent in kind, as nearly ten years have elapsed since they were first made, during which period vast improvements have been made and the value of the holdings have increased. It is also noteworthy that these returns showed the average rentals of the years 1280 and 1282 F. S. corresponding with September 1873 to June 1875, years in which this district was visited with famine on account of ailure of crops. No return since then has been made in the district.

19. Nothing can be more unjust and nothing at the same time can be more detrimental to the interests of a zemindar than to lay down such a hard and fast rule that the money-rent shall not in any case exceed the rental at which a holding is entered in the road-cess returns. While thus the income and emoluments of a tenant will increase with the increase in the productive powers of the soil and rise in the price of grains, those of the poor landlords are attemped to be curbed and curtailed in many cases below his liabilities and are allowed to proceed so far and no further.

20. It is no wonder therefore that the zemindars of this district look upon such a suggestion with feelings of alarm and despair. The proposal to make a substantial deduction in favor of the ryot "in consideration of the whole risk of cultivation being taken by" him tends only to add gall to bitterness. If such a deduction be allowed to the ryots, would not the zemindars be justified in demanding that a substantial addition should be made in their favor in consideration of the benefits and advantages which the ryots will derive from the existing improvements which were chiefly effected by their capital and exertions? Considering, then, the peculiar nature of the bhowli tenure and the benefits which are derivable therefrom, considering also that this tenure has been in existence from time immemorial and that both landlords and tenants thereunder have always regarded it as highly beneficial to the interests and welfare of both, any attempt to do away with this ancient tenure, sanctioned by long usage and accepted by the people as a source of blessings to them, is not only uncalled for, but is detrimental to the cause of agriculture and subversive of the rights of the parties. Any such attempt should be given up as hopeless, as it is not possible to devise any practical principles of commutation, fair, just, and equitable to the parties concerned. No possible apparent good, either to the landlord or to the tenant, does the provision of section 53 secure; but it appears to have been introduced into the Bill simply with a view to remove the seeming anomaly which this tenure, notwithstanding its intrinsic and inherent virtues, present in comparison to tenures prevalent in other parts of Behar and Bengal. But as we cannot possibly alter the natural features of this district and its peculiar circumstances under which this tenure has lived and grown up, we cannot, by any legislative enactment, remove the anomaly without causing immense injury. In my opinion, therefore, which I share with the other landlords and the tenants of the district, the provision of section 53, together with that of clause (*b*) of section 210, which seems to have been made with a view to strengthen it, should altogether be eliminated. The conversion or otherwise of this tenure had better be left in the hands of that powerful, but silent and quetly working legislator—Time.

21. The provisions of section 83 read with section 220, clause (*c*) and section 99 sub-section (2) are more revolutionary and destructive than those of section 53. have already shown that the crops, being grown on the lands in which both the landlords and the tenants have vested rights, and being protected and reared by the joint capital and combined labor of both, ought to be, as they have always been, considered as their joint property in their joint possession, and that both of them have, from time immemorial, treated and dealt with them as such. The principles of law and equity which govern the enjoyment and possession of joint property ought to regulate, as they have hitherto been doing, the crops of the bhowli lands. But the provisions of section 83 place the bhowli crops, whether subject to appraisement or division in the exclusive and entire possession of the ryot, in total disregard of the rights of the landlord to the joint possession thereof. The penalty clause (*c*) of section 220 of the Bill, would make the landlord's interference with the cutting or removing of the crops, an offence of the criminal trespass within the meaning of the Indian Penal Code; while section 99 would prevent the zemindar, without the consent of the tenant or the written permission of the Collector, from making any measurement except in certain cases specified therein. The exceptions

attached to sub-section (2) would only cover measurements when the rent varies with the area affected by alluvion or diluvion and varying from year to year, and when the rent depends upon the area under cultivation, and such area varying from year to year. But none of these exceptions are explicit and wide enough to cover the measurement of the bhowli lands for the purpose of appraisement where the rent depends not so much upon the area under cultivation as upon the actual produce of the lands. The provisions of these sections, while they contemplate to give every protection to the ryot and to create new rights for him, deprive the landlord of his rights to enter into fields for the purpose of making appraisement and superintending the reaping, gathering, or dividing of the crops and of preventing the surreptitious or fraudulent removal of them before appraisement or division. If these rights of landlord, which he has so long enjoyed without disturbance and interruption and without any prejudice to the interests of the ryots, be so suddenly and summarily taken away, he will be thrown off and placed at the absolute mercy of his tenants with regard to the timely reaping and gathering of the crops, and will be rendered utterly powerless in protecting himself from fraud and other acts of bad faith on the part of his ryots. When the rent payable to the landlord depends upon the actual produce of the fields, and when the increase in such produce mainly depends upon his care and capital, could any thing be more unjust and hard upon him, more distressing and disheartening to him, than to take away from him the right of protecting himself and his interest from foul play and fraudulent act, and of seeing that his legitimate income and just emoluments do not suffer at the mere will and pleasure of his tenants, who, being in absolute and exclusive possession of the crops can do with them as they please, without any fear of immediate and effectual interference on the part of the landlord. There are many crops grown in the bhowli lands yielding edible pods and peas which require a great deal of care and vigilance for protection from being eaten up by men, while they are yet unreaped and unremoved from the fields. With regard to the proper protection of such crops the landlord is left at the tender mercy of his tenants. It is notorious that, in spite of the vigilant watch which is kept over such crops while they are in the fields both by the tenants and the landlords' men, they are not safe from being eaten up by greedy passers-by, and from being plucked off by the children and women of those tenants themselves who are far from being well-to-do. Can the interests of the landlord with regard to these crops be properly guarded, when they are in danger of being devoured up at an early stage, not only by other men, but by the tenants themselves, and when the landlord dares not for fear of criminal prosecution, interfere and rescue them from such waste and misappropriation. While the poor landlord is liable to be criminally prosecuted for trespass if he prevents or attempts to prevent the ryots from "*otherwise dealing with any produce of a holding*" what penalty is provided for for the tenants if they commit, as being thoughtless and improvident they are sure to do, any acts of bad faith with respect to the crops that are henceforth to be left in their exclusive possession, except the vague and soothing provision of sub-section (4) of section 83, which will sound well in theory, but will scarcely work satisfactorily in practice? Is this fair dealing and meting out even-handed justice to the parties concerned? Mark the words italicised above. Let the tenant deal with the produce of his holding as he likes, the landlord shall not interfere; if he feels himself aggrieved or injured by any acts of his ryots, he must go to the civil court and undergo all the expenses, anxieties and embarrassments of a litigation before his grievances can be redressed and his injuries remedied as against the ryots. The landlord is to be handed up before the criminal court, even for the slightest attempt on his part to exercise his hitherto undoubted rights on his own property, while the ryot's body is not to be touched even for the grossest misappropriation of the crops. If the tenant removes any portion of the crops before appraisement or division, all that is left to the landlord for the remedy is to sue for his share in the crops so removed which shall be deemed to have been as full as the fullest crop of the same description appraised in the neighbourhood on similar land for that harvest. So if the zemindar attempts to touch the crops he must be dragged to the criminal court; if the tenants actually remove them, he must be forced to go to the civil court, where he must prove, before he can succeed, that there has been a removal and that similar land in the neighbourhood produced a certain quantity of crops of the same description. If he satisfactorily discharges the burden of proof that would thus lie upon him, right and good, but if he fails to do so, or if his case is knocked down on some legal technicalities, he must not only lose his share of the crops, but must be saddled with all the costs of the litigation. That the landlord, when the ryots combine against him, must fail is any thing but certain. In the event of such combination, how difficult it would be for him to procure evidence on those points which he must establish before he can make out *primâ facie* case against his tenants. What can be the best of proofs on those points, unless it be the evidence of some of the neighbouring ryots, and how can he expect to avail himself of such evidence if the ryots rise in a body against him, with the intention of causing material injury to their landlord. Instances of such rising among the ryots of the Surfa class are not wanting. Then, again, the sub-section (4) though it appears to assume the garb of a penalty clause and a preventive measure, would rather encourage, than put down, the removal of the crops, before appraisement or division on the part of a ryot, in cases in which the land of that ryot happens to produce the best, fullest and most plentiful crop in the neighbourhood, as such removal would unquestionably lead to his advantage and gain, even if he be sued in the Civil Court to contribute towards the share of his landlord. Having obtained more, he will not hesitate nor feel to give less to his landlord. While the section

recognizes the *agorbatai* system of appropriation of the bhowli produce by both the parties, the essence of which being that the crops should be reaped, gathered and thrashed under the watch and supervision of both, and that neither of them should, before division, remove or appropriate any portion of them, section 220, clause (*c*) by making the zemindar's interference, as a criminal offence, gives full liberty to the ryot to bring only as much as he wishes to the *khalian* and to take as much as he pleases to his home, in which case the zemindar would have greater difficulty, in availing himself of the benefit provided for in sub-section (4). This section in the hand of an unscrupulous and oppressive landlord, may be worked to the ruin of the tenants of the *reyan* class. Such a zemindar having allowed appropriation by *danabandi* or *agorbatai* may yet go up on alleged removal of the crops without his consent by the ryot and force him to pay up in accordance with the measure provided by sub-section (4). Such an unscrupulous landlord, fond of litigation and calculating upon the support of some of the ryots of the superior classes either of his estate or of a neighbouring estate might always find it to his advantage, to seek the benefit of sub-section (4) to compensate the loss to him, by deficiency of crops, which might be due to his own negligence or indifference to maintain the irrigation works, rather than to any fault on the part of his tenants. The difficulty of successfully supporting his claim under the said sub-section might compel a zemindar, who has hitherto been honest, to fabricate evidence and to commit perjury. These provisions seem to have been introduced either as a measure to compel the landlord by making his position as difficult as possible, to apply for commutation into nakdi, the impolicy and evil consequences of which have already been pointed out, or with a view to ensure timely reaping and appropriation by the ryots, of their share in the produce of the bhowli fields; which have been well provided for in sections 81 and 82. Magistrates and sub-divisional officers are supposed, during their winter tours, to visit almost every village, and where they would see that, in consequence of any dispute between the parties, the reaping of the crops has been delayed, they can, with or without the complaints of the parties, move the Collector for an order under those sections. But for whatever reasons introduced, these provisions which tend to encourage smuggling and misappropriation on the one hand, and perjury and forgery on the other, and are at the same time subversive of the rights and detrimental to the interests of the parties, and opposed to long established custom, should find no place in a Bill which seeks to secure and protect the rights and guard the interests of either of the parties against the aggression and encroachment of the other.

22. It may here be noted that the Bill does not provide for the insurance of the genuineness and authenthecity of *danabandi* papers prepared when the parties are on good terms, to prevent the possibility of the landlord suing the tenants on papers forged subsequently for the purpose, and to restrain the ryot from setting up a false plea of *batai* (division) when he had really accepted *danabandi*, or the landlord from suing on *danabandi*, when there was an *agorbatai*. Disputes, false suits, and false defence, of this nature are of more frequent occurrence than the actual disputes regarding the propriety and fairness of appraisement or of division.

23. The land-lord's rent depending upon the actual produce of the field for which, as shown before, he annually spends large sums of money and undergoes hard labour and endless trouble, it is but just and fair that he should have the power, which he has under the custom regulating the tenure, of preventing the tenants from neglecting cultivation or growing indifferent crops. The ryot not being liable to pay rent for any portion of his land left uncultivated, may, if evilly disposed, leave the land fallow or throw bad seeds out of time, with a view to diminish the profits of the landlord, and cultivate only so much as he requires for his own purposes. At first sight, it might look absurd that a ryot could do an act which would cause loss to him. But cases of such neglect of cultivation have actually occurred among ryots of the superior classes, many ryots of the Brahman, Babhon, Rajput Pathan or Malik caste having an extensive *Jote* would not care leaving a good portion uncultivated, if by so doing, they could reduce the *Jama* of the village and compel their landlord to quietly walk out of the village or the estate. Many of these being descendants of former proprietors, do not like to bear the yoke of the landlord not of their own kith and kin. The serious riots which followed the execution sale of the Kowa Koll estate in this district, by the ryots combining with the Tekait family, to prevent the purchasers from getting a footing in the estate, must always be fresh in our mind, as illustrative of the strong feeling of aversion which certainly this class of ryots entertain against new proprietors. If the old records of the Criminal Court be turned over, Kowa Koli would not be the only and solitary instance of this. When the ryots are told and made to understand that they have the option of cultivating only as much as they wish or please, without any risk or liability, they would find an easy and convenient means of getting rid of an obnoxious landlord. In lieu of the hard struggles and fights for the purpose at the risk of going to jail. Instances of well-to-do ryots, who can well afford to purchase the estate in which they live, are not rare. Bhowli landlord, unwilling to sell, may thus be forced by these ryots and their brethren omitting or neglecting to cultivate for no longer period than 2 or 3 years. Again a neighbouring landlord might, by purchasing a few tenants' right of occupancy, do the same.

24. The Behar Rent Commission made a suggestion to provide against such acts and omissions on the part of the tenants, so prejudicial to the interests of the landlord. But it did not find favour with the Bengal Rent Commission who, not foreseeing the loss and annoyance

to which the landlord might be put, and led away by an erroneous supposition that the bhowli ryots paid rent as high as half the gross produce of his fields, held that he should have the option of cultivating as much as he likes. A provision like this would be dangerous to the landlord and place him at the tender mercy of the designing, turbulent and litigious ryots of the superior class, whose number in this district, as stated above, is large enough. The interest of the landlord required some provision like the one suggested by the Behar Rent Commisson or any other, to enable him to exact from the tenant timely and proper cultivation. But it is alarming and distressing to find that the provisions of section 31, clause (*a*) and section 58, clause (*b*) taken with the absence of any provision to the contrary give both to occupancy and non-occupancy ryots, the option of cultivating any portion of their holdings or growing any crops they would like. I might add that such a provision regarding bhowli land might lead the landlord to neglect or be indifferent to, the irrigation works which in the present state of the district will be extremely harmful.

25. This district is dissimilar with other parts of Behar and Bengal, not only with regard to its bhowli tenure, but it presents features of dissimilarity with regard to its *nakdi* tenure as well. The nakdi tenure here is of two descriptions, *shikami* and *chikuth*. *Shikami tenure* is that under which the landlord has not, or at any rate, is presumed to have not, any power of enhancement irrespective of the period for which the tenant might have been in possession thereof. The money-rent is not fixed upon the land but upon the crops actually grown, varying with the nature of the soil and the class of tenants whether *Surfan* or *Reyan*; the former having a lower rate to pay than the latter. The lands which are generally cultivated under *shikami* tenure are the best land lying on the boders, of the inhabited portion of the village, called *dihans* land; and crops grown thereon pay the higher money-rent than the same crops grown upon fields more distant from the village site. It is for this reason that almost every village in Gaya has fixed rates of rent for different kinds of crops with reference to the different part of its land and different classes of tenants inhabiting it. Crops generally grown under the *shikami* tenure, are those of the *bhadoi* (autumn) and *rubbi* (spring) harvests. Hence every village for every class of ryots and for every plot (*kita*) of land has a fixed rate of rent per *bigha*, for *murua* and *posta*, and an inferior rate for *murua* and *rubbi*. For example a Babhun ryot growing *murooa*, *marhua* and *posta* on a particular land reserved as *shikimi* in a particular year, would pay the rent, at the rate for *marhua* and *Posta* fixed for ryots of his caste, but he should be liable to pay an inferior rate of rent, if on the same land, he would grow *murhua* and *rubbi* the next year; and *vice versâ* similarly a ryot of the inferior class would pay a higher rent for the same kinds of crops grown upon the same land. Every ryot of an estate has a fixed quantity of *shikam* land, partly at the rate of *murhua* and *posta* and partly at the rate of *marhua* and rubbi. If the ryot grows, with the consent of his landlord, poppy upon a bhowli field, he pays for one harvest bhowli rent and is liable to pay nakdi rent for the poppy (*posta*) at the rate fixed in the village for the particular class of ryots to which he belongs for poppy grown under such circumstances. There are certain crops which from their nature cannot be the subject of either appraisement or division under the bhowli system, such as sugar-cane, and cotton (*banga*) and as they cannot thrive if grown on the same land for consecutive years, they are generally, with the consent of the landlord, grown upon different plots of bhowli lands in different years. Every village has thus a sugar-cane rate for each class of ryots and for every plot, and similarly a *banga* rate. The ryot must pay for sugar-cane and banga, the sugar-cane and banga rates of his village fixed for his class of tenants even when he grows those crops upon his *shikami* or *chikuth* land which he seldom does. In some villages there is also *dhan shikami*, the quantity of which is small. In addition to these crops, there are other crops called *jethwa*, or summer crops for which, so far as I have been able to ascertain only one rate prevails throughout the district without reference to the class of ryots, *viz.*, one anna per *cutha* or $\frac{1}{20}$ of a bigha which is $2\frac{1}{7}$ times as large as a Bengal *bigha*. He has to pay for the jethoa crops, only when he grows them upon the bhowli lands, but not when he grows them upon his *shikami* or *chikuth* land. Thus it would be clear that the so-called Nakdi land of Gaya is not really so but only a form of bhowli paying money-rent for crops, which, from their nature, do not admit of being delivered in kind. Every ryot of whatever class, whether he has held his *jote* from the time of the permanent settlement, or whether he has recently settled in the village and commenced cultivation, has to pay for such crops, the same rate of rent which is fixed for his class of tenants in that village; and the custom which regulates this kind of tenure does not recognize any right in the landlord to alter the village rates of the different crops for which under the custom, money-rent is payable. Thus a ryot, whether he has acquired the estate of a ryot holding his jote from the time of the permanent settlement or that of an occupancy ryot or not, enjoys, as regards enhancement, all the rights and privileges guaranteed by Act VIII of 1869 (B. C.) to a ryot holding at fixed rates from the time of the permanent settlement. The records of the courts here will show that no landlord ever brought any suit to alter the established village rates of any crops against any ryot, new or old. But the custom has not been so with reference to the *chikuth* tenure, which is a temporary settlement of waste or uncultivated but culturable lands, for limited terms of years, at nominal rents for the purpose of reclaiming or bringing them under cultivation. This tenure is governed and regulated by the terms of the contract between the parties. The ryot can never claim the right of occupancy in them, nor protection from enhancement after the expiry of the terms. When such lands are thus properly reclaimed and brought under cultivation, and

become capable of producing any crops as full as those of the surrounding, or neighbouring bhowli or *shikami* lands, the landlord, at the end of the temporary settlement, is entitled under the terms of the contract to settle them, as a rule with the same ryots as *shikami* or *bhowli*, or with others when the former, as is seldom the case, do not wish to cultivate them under the bhowli system or at *shikami* rates as described above. If one term be not sufficient to render the lands fit for proper cultivation, the settlement is renewed from time to time till they become capable of yielding full crops. It may here be mentioned, in passing, that packa wells for irrigation of *shikami* crops or *chikuth* lands, are constructed by the landlord at his cost. It might also be added that no rent in this district is charged for pasturage or for homestead lands of actual cultivators. *Motaharfa* or rent for homestead land is taken from shop-keepers and other inhabitants of the village who are not of the Surfa or the favoured class and who have no cultivation whatsoever.

26. The above description of the tenures which prevail in this district, was necessary for the purpose of of properly understanding the bearing of the various sections of the Bill upon them and the manner in which they are affected thereby. I have already examined the provisions of the Bill regarding the bhowli tenure which is the most vital structure in the whole agricultural system of the district, as briefly as, with due regard to the importance of the subject and the gravity of the questions involved, I possibly could.

27. In addition to what I have said on the several sections bearing directly upon the bhowli tenure. I now beg to offer such remarks on rhe other parts of the Bill as have suggested themselves to me. The definition of "*estate*" as given in section 3, sub-section (1), read with the provisions of chapter V, sections 25 and 26, is rather inconvenient and open to objections. In this district, as well as in other parts of Behar, land, registered under one entry in the Revenue Register, prepared under Act VI of 1876 (B. C.) includes several villages. Lot Sribnagar registered under one entry contains about villages extending over an area of square miles, situated in different parganahs. Taluka Bilkhora has ninety main villages, besides as many hamlets or more. Unless it is meant that a ryot, having a right of occupancy in one of these villages, should have that right with reference to the lands in all of them, the word "estate" should either be removed from sections 25 and 26, or its definition modified.

28. The popular conception of a tenure-holder is that which is combodied in the provision of section 5, sub-section (1). But the Bill proposes to include two other clauses under it which are altogether new, *viz.*, (1) a ryot who has sub-let more than half of his holding; (2) a ryot who holds 100 standard *bighas* which in these districts would mean $\frac{400}{9}$ (or $44\frac{4}{9}$) bighas, and who has sub-let whole or part thereof. There seems to be no reasons to give such ryots as these the name or position of a tenure-holder. Notwithstanding this name the Bill subjects them to the same rules of enhancement which an ordinary occupancy ryot is subject to. It is suggested in the Government of Bengal's letter that it would exercise as a check upon sub-letting, but in my humble opinion it would rather encourage it than discourage it. Any temporary farmer of any estate might succeed in purchasing all the royti holdings and by sub-letting convert himself into a permanent tenure-holder and prevent the landlord from ever getting *seer* or direct possession of his estate. Thus while these new provisions confer no benefit upon the actual cultivator of the soil, and rather tend to make their position worse, they trench upon the rights of the proprietor. No ryot holding 100 bighas or more has, as is wrongly assumed in the Government of India's letter, ever been regarded as a tenure-holder.

29. Tenures in this district, as defined in section 5, sub-section (1) are only such as have been created by contracts between the parties and are governed by the conditions and terms therein stipulated. They are not subject or liable to enhancement or cancelment, except under the conditions of the contracts. Whether temporary or permanent, they are transferable, some under the terms of the contract and others by local custom. I do not therefore possess sufficient information so as to be able to express any opinion as to the fairness or otherwise of the rules of enhancement laid down in sections 7 to 10 in the Bill.

30. The descriptions which I have given above of the tenures in Gaya will bring all its ryots without reference to the period of their cultivation as regards their bhowli and *shikami* land within the class of ryots holding at fixed rates as defined in section 4 sub-section (3) clause (*a*), and confer upon them whether they are occupancy ryots or not, indiscriminate and unlimited power of alienation which it is not deemed necessary or expedient to confer even upon occupancy ryots. Clause (*b*) of section 23 would protect even a ryot who has succeeded very recently in getting any portion of either *shikami* or bhowli lands against eviction, even if he would render the land unfit for the purposes of tenancy, and his holding would under section 182 be sold, subject to incumbrances and even in execution of decrees—privileges not enjoyed by ordinary occupancy ryots. The classification of ryots, hithereto recognized, both by law and in practice, consists of three classes of ryots, *viz.*, (1) ryots holding at fixed rates from the time of the permanent settlement; (2) ryots not so holding but having right of occupancy; and (3) ryots neither so holding nor having any right of occupancy. This classification is an exhaustive one and should not be interfered with and sufficient provisions having been made for the protection of all these classes of ryots, section 23 might be omitted without any detriment to the existing interests and rights of the tenants, as far at least, as the Gaya ryots are concerned.

31. The difficulties which generally attend a ryot in carrying on cultivation, and the inconvenience to which not only he but his landlord or landlords are put if he possesses lands in different villages or under different proprietors, as well as the detriment which is occasioned to the cause of agriculture by his holding lands in various villages under as many proprietors, should make it highly desirable that a ryot having a right of occupancy in a village must be made or induced to reside in that village so that his interests may not suffer, and that timely and proper cultivation may not be delayed or in any way prejudiced by any possible friction between the rival landlords of the different villages. As a rule, a ryot attaches more importance to his interests in the village where he has residence than to those in other villages where he has his cultivation only. It not very unfrequently happens that in disputes between his several landlords regarding water and irrigation works, he would take the side and embrace the cause of that landlord in whose village he has both his residence and cultivation, whether that cause is just or unjust, to the great deterioration of cultivation in those villages whose cause he has left or neglected. Instances have also occurred of a ryot who holding his *jotes* under two proprietors who are on fighting terms with each other, has been actually influenced and induced by the landlord in whose village he resides, to neglect his cultivation in the village of the rival landlord and thereby has caused loss to the latter, without incurring the liability of paying rent for the lands so neglected as they are mostly under the *bhowli* system. For these reasons, based as they are on local knowledge and experience, the Behar Rent Commission deemed it not only expedient but indispensably necessary to make residence as an important and essential element in the acquisition of the right of occupancy by a ryot. Residence therefore should not be lost sight of as an essential condition to the acquisition and maintenance of the right of occupancy by the ryots, if not of whole Behar, at least of Gaya, which differs materially from other parts of Behar in the peculiar nature of its tenure and agricultural circumstances. But Chapter V of the Bill which treats of occupancy ryots have introduced changes in the existing law regarding landlord and tenant, which although they shower innumerable benefits, hitherto unenjoyed, upon the ryots, would tell very hard not only upon the landlords, but would also under peculiar circumstances prove injurious to the interest of the ryots themselves. The provisions of sections 25 and 26 as they stand at present would tend, as soon as the Bill is passed into law, to convert all lands held by ryots as such, whether they have occupancy rights in them or not, into holdings with occupancy rights permanently and inseparately attached to it. There could have been no serious objections to these salutary provisions for the ryots had they not threatened to demolish some of the long-established and vested rights of the zemindars and strengthen the position of the former by undermining that of the latter. No provisions, how beneficial soever it may appear or prove to a particular section of the community, should find favour with a just and benevolent Government, as our Government undoubtedly is, which seek to ameliorate the condition of the one at the sacrifice of the cherished interests of the other but equally important section of the same. The definition of "settled ryots" as given in section 26 is so sweeping and comprehensive as to include and take in within its wide and almost unlimited range every class of ryots, however small and insignificant their holdings may be, provided they have held a bit of land as such in any village or state, giving them the benefit of extraordinary presumption, as specified in sub-sections (2), (3), (5), (6), and (7), only one of which (sub-section 2) being rebuttable. In many cases it would be extremely difficult for a zemindar to rebut such a presumption, as he might not be in possession of all the evidence required for the purpose, especially when an estate is owned by several proprietors not on good terms with each other. The presumptions which are not irrebuttable would operate with redoubled hardship against the bhowli landlord, especially those in sub-sections (6) and (7), as they would prevent the landlord from settling the land abandoned by a ryot with any other ryot for at least three years, and he will fail to induce any ryot to accept such a temporary settlement for so short a time; for section 96 gives the ryot so abandoning a right to bring a suit within the time prescribed therein. This section 25 with the definition of "settled ryot" as given in section 26 would confer rights of occupancy upon all settled ryots, not only in the lands held as such by them in a village or estate, but in those also which they may hereafter acquire, no matter how and where, provided only that they may hold such land as ryots. Henceforth all that would be requisite for a ryot to acquire a right of occupancy in lands in a village or estate that may come into his possession subsequently after the passing of the Bill is to hold only a *dhoor* of land in that village or estate as a settled ryot. The provisions thus do away not only with the residence of the ryot in a village, but with the 12 year's rule, as well as the essential and guiding principle in the acquisition of the rights of occupancy in the lands held by him in that village. What the evil effects of these sweeping provisions would be are not far to see. They would inevitably give rise to disputes between the parties, of a novel but alarming character, by creating a feeling of jealousy and ill-will against each other, and destroying that peace and harmony between them which are so indispensable for the furtherance of the cause of agriculture in the interests of both. These provisions would also go very deep to sap the very foundation of the tenure which is known in this district under the name of *chikuth* lands, which have already been described, and with respect to which, no ryot, whether settled or not, has any right of occupancy, and which from the operation of the terms of contract regulating the grant of such lands are liable to enhancement of rent from time to time, until they are capable of yielding the ordinary full crops produced in the bhowli or shikami lands in the village, and are converted into either of those descriptions of lands, unless the provisions of section 212 be so warded and

extended as to govern these *chikuth* lands with retrospective effects. Under section 31 of the Bill, right of occupancy is transferable and capable of being sublet; and under sections 32, 33, and 34 the landlord (a proprietor or permanent tenure-holder, or any other tenure-holder expressly authorised in that behalf by section 36 clause (*a*)) is allowed to exercise the right of pre-emption on voluntary sale or sale in execution of occupancy right, and to take the place of mortgagee on foreclosure when such occupancy right is subject to mortgage. But on the principle that inferior title merges into a superior one the moment the landlord's title on purchase, pre-emption or foreclosure, is completed, the right of occupancy would at once cease under section 28. But if the landlord having thus acquired land with the right of occupancy, settle it with a "settled ryot" of his village or estate, that ryot would at once acquire right of occupancy therein by the operation of section 25. Section 42 would prevent him from settling it with any "settled ryot" of his village or estate on any higher rent than what was paid by the former tenant except on conditions mentioned in section 41. The case would appear to be otherwise if the land be let out to one who is not a "settled ryot," or if it be sublet by a purchaser other than a landlord. If the purchase be made by any person other than the landlord of the village or estate in which the land is situate, the right of occupancy would not be extinguished, and section 62 would give him the power of settling by a registered contract at 50 per cent. on the rent paid by him to his landlord. The landlord beyond keeping out a stranger from his village or estate, gets no benefit out of the trouble and expenses of making the purchase. It amounts to this that, he must not purchase or exercise his right of pre-emption at all, or if he does, he should not give it to any "settled ryot" of his, although that ryot might be in great need of land for cultivation and ready to take it on any reasonable terms. The landlord would give it to him only who would pay him the highest rent, or cultivate it himself if he be able to do so. That such restrictions would be more injurious to a bhowli landlord, needs no further demonstration after what was already been said of the bhowli tenure. I have only to remark, while on this part of the subject, that after having given it the best and most careful consideration that its importance deserves, I fail to see why different rules should regulate the rights of purchase when made by different classes of men, and deprive a landlord purchaser of those rights which a common purchaser would enjoy.

32. On the right of transferability and sub-letting, I have to say that I was once in favor of it. But further consideration has induced me to change my opinion. It was at one time believed that in this district at least there was custom of transferring. But evidence, both oral and documentary, given in a case which arose in this district in connection with one of the escheated estates, and the finding of the courts thereon have satisfied me that that custom is uncertain and not fully and clearly established. One Sital Pershad, a mukhtar of the criminal courts here, was for some time the ticcadar of a small share in the village Simuarali. During the time of his lease he managed to purchase some tenantry rights and sub-let them to some of his vendors, as well as to other ryots of the village at very high and exorbitant rates of rent, both bhowli and nakdi. When Government took possession of the estate under a decree of the civil court, it refused to acknowledge Sital Pershad's purchase, as by it he had converted himself into permanent tenure-holder between Government, the proprietor, and the actual cultivators of the soil. The arrangement was ruinous to the ryots. Sital Pershad instituted a civil suit against Government and the ryots, claiming to justify his purchase by a custom which was alleged to sanction alienation of occupancy rights. The suit was defended by Government on the plea that no such custom did ever exist. Sital Pershad brought forward a good deal of evidence, oral add documentary, to prove the alleged custom, but the evidence could not show a single instance of alienation of occupancy rights made without the knowledge or consent of the landlord, notwithstanding that such evidence stood unrebutted, Government depending mainly on facts elicited in cross-examination. The courts held that the custom alleged by the plaintiff did not exist, and that the plaintiff's suit should be dismissed as against Government. Mr. Porter, while disposing of the appeal in his judgment, which has since been confirmed by the High Court, after reviewing the evidence, remarked":—It seems to me therefore, the plaintiff has entirely failed to prove the custom which he pleads, *viz.*, that rights of occupancy are transferable in this district without the consent of the landlord. There is no doubt that the rights of tenants are sold as well privately as in execution of decrees. In the latter case they are usually purchased by the lessees or the landlord, as the case may be, and in the former by other ryots or by speculators, but in all such cases it depends upon the good-will of the landlord whether the transferee is recognised or not." Further on, in answer to the complaint of the learned Counsel for the appellant that it was hard upon his client, a *bonâ fide* purchaser, he said :—"Moreover it would be much greater hardship if speculators or lessees were allowed to purchase the rights of occupancy from the cultivators and without themselves cultivating the same, form another link in the chain of middleness between the landlords and the tenants. I need hardly point out the annoyance and harassment to which a landlord might be subjected by a custom of this kind." This was the only case in which this point was raised and judicially decided. This case, which was so hotly contested, affords clear evidence of the extent to which the abuse of this power of transferring and sub-letting might be carried, not only to the "annoyance and harassment" of the landlord, but to the ultimate extirpation of the peasantry and the creation of "vicious" class of middlemen. There can be no doubt that these middlemen who would have to pay all the liabilities of the former tenants would, with their sub-lessees, try to make as much profit as they can by means lawful or unlawful. In the case of money-rent, the Bill (section 62) gives to such middlemen the power to demand

profit to the extent of 50 per cent. on the rent which they have or shall have to pay to their landlords. The Bill has made no provision, however, limiting the extent which the bhowli rent might be raised by them. Assuming that they would only take half of what they would have to pay, the actual cultivators would have only $\frac{3}{20}$ or 15$\frac{1}{2}$ per cent. of the grain-produce besides chaff and straw. If this be deemed a sufficient share of an actual cultivator under a middleman, why not of a cultivator under the zemindar direct? But a cultivator who would only get $\frac{3}{20}$ of the grain-produce, would hardly find any encouragement to keep on cultivation. The creation of such middlemen which the Bill contemplates, prejudicial both to the landlord and the actual cultivators, increase the cause of dispute and discord which may tell seriously upon all agricultural improvements, especially in a bhowli country. It is curious to note this power of transferability is not to be exercised by the ryot unless he transfers the whole of his holding (*vide* section 97). The extravagant and heedless habits of the people, whether ryots or landlords, which make them spend large and enormous sums on marriages and other social and religious ceremonies, should always be kept in mind in disposing of this subject. Notwithstanding the strict provisions of the Mitakshara and the Mithila Law restraining alienations, how many families after families have been ruined by extravagant expenses. The cases of Babu Gouri Byj Nath and Ramratan Neogi, each of whom, till lately, commanded a princely income from landed estates, and who having within a few years had everything sold off, were reduced to extreme poverty, the one dying a beggar, and the other still going a-begging from door to door, are well illustrative of the danger which may arise out of this power of transferability. What assurance have we that the ryot, who is admittedly more ignorant, more thoughtless, and more improvident than his landlord, would not bring destitution and starvation upon himself and his children by the reckless exercise of this power?

33. Section 32 of the Bill provides, as a safeguard to the landlord against being put to annoyance and harassment, for the exercise of his right of pre-emption, and thus prevents the ryots' holdings from falling into the hands of money-lenders and other adventurers obnoxious to the landlord. This right, however, can only be exercised by a rich landlord. But how many of the landlords are so? Are not many of them over head and ears in debt, who are compelled to borrow, at exorbitant rates of interest, for paying Government revenues and other public demands, not to speak of petty landlords and shareholders? Where shall these get money to pre-empt? Even if they do, does not sub-section 4, of section 32, which gives power to the tenant to refuse to sell after the pre-emption proceedings have been carried on at a heavy cost, leave them at the mercy of the tenants? This right of pre-emption will, I beg to submit, give no effectual protection to the landlord. But what provision has the Bill made to protect the tenants themselves against making reckless transfers? None whatever. The bar, which section 37 and section 38 contemplate to provide against sub-letting, *viz.*, that a ryot, who sub-lets more than half his holding, shall be converted into a tenure-holder, and that his sub-lease shall not inure for a term exceeding seven years, is in my humble opinion, no bar whatsoever. Shorten this period of the lease, the more advantageous it would be to the lessor. The conversion into tenure-holder would protect the tenant against evictions even in cases in which an ordinary occupancy ryot has no protection. Under chapter XV, the tenure if sold, would be sold subject to encumbrances. A transferee, who is not a *bonâ fide* cultivator would rather immediately on getting the transfer, at once sub-let, under section 62, the whole of the holding purchased by him in order to get the position and advantages of a tenure-holder. No doubt he would be creating a right of occupancy against himself in favor of the under ryots, but that is no loss to him, when we find that theryots of the real tenure-holders and landholders have rights of occupancy. Thus the provisions of chapter V, by taking away the rights of the landlord do not confer any corresponding benefit upon the actual cultivators, but at the sacrifice of the interest of both of them, "tend to increase the link in the claim of middleness." In this district ryots for want of means of proper cultivation do sub-let from year to year, with the consent of the landlord to the cultivators living with them in the same village. It would be unwise and inexpedient to stop sub-letting altogether. In my humble opinion it had better be left alone, to be governed by the custom prevalent in each district or estate. So, if it be deemed necessary to put upon the right of occupancy the incident of transferability it should be confined to the cultivators living in the same village with the transferar. To prevent land from falling into the hands of one persons more than he is capable of cultivating, the landlord might also with certain restrictions be allowed to pre-empt.

34. The peculiar nature of the ryotty tenure in Gaya does not at all embarass us with any question of enhancement. We would therefore look to the provisions of the Bill regarding the enhancement of the rents of occupancy ryots with an air of indifference. But as the Bill proposes to turns our tenures and the relation which have hitherto existed between landlord and tenants *topsy-turvy* into such a state as we have never been familiar with, the question of enhancement is forced upon us for the first time in the annals of the administration of the rent law in our district. It appears to me at first sight that the restriction, which the Bill imposes upon contracts between landlords and ryots is not based upon any sound principle, the only justification being the supposed inequality between the parties in all matters. I have already said that in this district, there are two classes of ryots, the superior and the inferior class, the former of whom, forming the bulk of the cultivators of this district, are certainly not on terms of inequality with their landlord. Then again, why the ryots, who are supposed to be

free agents in all ordinary dealings specially with relentless money-lenders, should not be left free to contract with the landlords? The parties should be left, as much as practicable, to come to amicable terms among themselves rather than be forced to go to court. Yet the provisions of section 41, and sections 43 and 44, are such as would tempt the landlord to go to court in preference to an amicable settlement for enhancement of rent, and subject himself and his impoverished tenants to the trouble and costs of litigation. To an unscrupulus landlord wishing to avoid the trouble and expense of going to court, the provision of section 41 throw a temptation of falsifying his records in order to make a private settlement advantageous to him. This section also throws upon the Registrar a duty of satisfying himself as to the fitness of the ryot to enter into the contract which he would be asked to register, a duty, which he would neither have time nor means to discharge. On the principles of enhancement I have to say that there seems to be no apparent reasons why a less rate of increase should be allowed in private contracts than that which can awarded by the court. The limit of 7 or 15 years according as the increase made is 2 annas or 4 annas per rupee seems to us to be quite arbitrary. When increase is asked for, for increase in price, the ryot is certainly entitled to a deduction for the increase in the cost of production. But as the Bill limits enhancement on the ground of a rise in the price to only 25 per cent, in would be necessary, if this limit be allowed to stand, to make any deduction for increase in the cost of production, as that limit would leave three-fourth of the increase to the ryot. On the other principles, limits, and rules of enhancement, I do not possess sufficient information so as to be able to give any opinion. Nor is any Gaya landlord or tenant able to give any information or opinion on the soundness of the principles of the Bill on this subject. It appears to us a mystery why the enhancement principles should be based on the value of the staple crops only, and not of the other crops, which are equally and some times more valuable.

35. The occupancy ryot acquires right in the land by occupation for a certain period of time which the non-occupancy ryot, who is a mere cultivator without any interest in the land, does not, and there is no equity on the side of the latter to entitle him to obtain an equalisation of the rules for the enhancement of his rents, with those of the occupancy ryots.

36. On section 69 of the Bill I have to observe that the case laws have hitherto recognized the landlord's rights to appropriate payments made towards the satisfaction of his arrears first, but section 69 leaves it to the option of the ryot to have the payment made appropriated to the arrears or to the current rent. Such an option to the debtor is injurious to the interests of the creditor. The practice among landlords and tenants had also been to appropriate payments first towards arrears, and then the balance towards the current rents.

37. I had formerly shared the popular belief, and followed the current of supposed authorities on the subject of the imposition of the abwabs, and, in accordance with what I then erroneously thought of the subject, I expressed, in the year 1877, my opinion that the abwabs were illegal cesses, and could not be upheld either by substantive law or case law. But on reference being made to me on the subject by Babu Bimola Charan, Deputy Magistrate, with regard to the escheated estates, I went as thoroughly into the subject as I could, and made a most sifting enquiry into the papers that might help the material solution of this knotty problem. The result of my careful and deliberate re-thinking of the subject and the examination of the papers of several villages for years and years led me to subsequently change my opinion and to come to the conclusion that, at least in Gya, the imposition of abwabs was not only illegal and unjust, but legal and justifiable. I then found on a close re-examination of law-books that there was nothing in the statute or the case laws against my changed view. The zemindars of Gya not only take abwabs, but make certain concessions to the ryots which are not elsewhere made. No rent is here charged for pasturage, nor is any charge made or contribution asked for water-work from the ryots. Then again throughout the district the ryot gets in sugarcane and *banga* (cotton) Shikami lands cultivated by him, a deduction of 2 kattahs per bigha for which he has no rent to pay, and in some estates and villages he gets a similar deduction out of the chikuth lands. With reference to Shikami *Marooa-posta* and *Marooa-rubbi* lands he has to pay for every 2 kattahs per bigha at the rate of one rupee less than his ordinary rates of those crops. To the landlord he pays, in addition to the amount calculated on the crop-rates fixed for him, a *Dustoor* generally of one anna and sometimes of half an anna per bigha which is taken by the Malik, and *hujtana* or the Patwari's fees for receipts at the rate of one anna per cultivator, besides the fees of the ordinary village establishment, namely, that of the amin, gumashtah, weighman, &c., who, as shown above, all work both for the landlord and the tenants in a certain portion either per bigha or per rupee, varying in each village and perganuah. In all these rent discussions we have had questions about standard pole and standard bigha always raised and mooted, but none up to this time about the coin in use among the landlords and tenants in the calculation and settlement of their yearly accounts. The coin in use among them in the district of Gya is the sicca rupee, which they convert into the current coin by adding exchange rate under the name of *batta mal*, varying from $\frac{1}{6}$th of an anna to $\frac{3}{4}$th and $\frac{1}{4}$ anna in different villages per sicca rupee, and batta company varying from 1 to $\frac{3}{4}$th and $\frac{1}{4}$ anna in different villages on the total sicca rupees, plus the total *batta mal*. The coin which was current in the country before the year 1773 was the coin which was struck in the time of Shere Shah and adopted by Akbar and his successors. It was considered the purest of all coins, and consequently, when in the year 1773, the Calcutta sicca coin, known as the Murshedabadi, was introduced, a certain exchange rate called *batta mal* was levied to

equalise the value of the new coin with that of the old one. Mr. Wilson says that 100 sicca rupees was equivalent to 116 current rupees. At the time of the Regulation of 1793 rent must have been paid in the coin then current with the *batta mal*. Any subsequent change of coin would necessitate the levy of exchange rate upon it to equalise with the substituted coin. Act XVII of 1835 introduced the Company's rupees into the country, the value of which under section 4 of that Act is $1\frac{1}{16}$th of the Calcutta sicca rupees, *i.e.*, to say, a sicca ruppee was considered equal to $1\frac{1}{16}$th Company's rupee. This change led to the levy of further exchange rate called *batta company*. The realisation of the exchange rates cannot therefore be considered as an illegal cess; on the contrary, it is a just and legal one, being part of the rent. Neither are the cesses realised as contribution from ryots by the landlord for the payment of the necessary expenses of the establishment illegal, inasmuch as the establishment must be kept and maintained for the benefit both of the landlord and tenant. The abwabs on the bhowli stand on a far different footing as above referred to. I might add that my present views of the abwabs have been accepted by the District and the Subordinate Judges' Courts. Decrees are now being awarded for the so-called abwabs, nakdi and bhowli, as being part and parcel of the rent. One of these hotly-contested cases went up in appeal before Mr. Porter, the then District Judge, and his finding and judgment on the question of abwabs, and generally on the bhowli tenure, and peculiar circumstance of the district are so full and conclusive that I cannot resist the temptation of quoting a good portion from the same here: "On the nakdi rents the plaintiffs claim the following cesses, namely, Hujootana, a fee of 1 anna per head, payable by the ryot towards the patwari's salary; batta company 3 pice per rupee in the rent. These two cesses have been admitted by the defendants and allowed by the Lower Court. In addition to these I find the following batta mal at 3 pice per rupee. Dustoor at $\frac{1}{2}$ anna per bigha. Sonari or allowance payable to the village weighman, $\frac{1}{4}$ anna per rupee. Rusti Dak (or post cess) at 5 annas per cent. The plaintiff has proved by the evidence of the patwari and some of the other ryots of this village that these cesses have been paid for many years, and there can be no doubt that such cesses are prevalent in this district. The question is whether such cesses can be legally recovered as part of the rent. This depends on evidence of custom (see I. L. R., 1 All., p. 440). As a rule I am averse to allowing the realization of these cesses in addition to the rent payable in cash, as it was undoubtedly the intention of the Legislature that landlords should incorporate these cesses with the rent, and abolish them as far as possible, and many instances have come to my notice where the landlords after incorporating and adding these cesses to the rent and consolidating as required by the regulations, have still continued to levy the cesses on the ryots. But, on the other hand, there are many instances where the ryots have opposed any such consolidation of the rent and have preferred to pay at the old rates, plus the cesses which have been collected from time immemorial as part of the rent. It is not the defendant's case in the present suit that the cesses now demanded have ever been consolidated with the rent, but his case is that these cesses have never been paid. I am clearly of opinion, from the evidence adduced by the plaintiffs, that this allegation is utterly false. It is not probable that the other head ryots of the village would have admitted the payment of these dues, if they had not been in the habit of paying them, and where custom is proved, I think that even in nakdi rents the tenant is bound to pay. Two of the cesses claimed, *viz.*, the Hujootana and the batta company are admitted, the other cesses come to a little more than an anna in the rupee, and against this it is shown that the landlord makes an allowance of 2 kattas in the bigha in sugar-cane and chikuth lands for which he charges no rent. If a calculation were made and the full rent charged on the 2 kattas per bigah, which are excepted, and all the abwabs or cesses claimed were disallowed the ryot would be in a worse position than he is now. This system of account appears complicated to the uninitiated, but it is the system which has been prevalent in the district from time immemorial and must therefore be recognized by our courts. The evidence given in this case satisfactorily establishes the custom, and I am of opinion therefore that the plaintiffs are entitled to the cesses which they claim on the nakdi rents. As regards the bhowli tenure the matter stands on a somewhat different footing. The point to be decided is to what share of the produce is the landlord entitled under the custom prevalent in the village. The history of the bhowli tenure in this district has yet to be written, but as it is calculated that nearly $\frac{5}{6}$th of the cultivated area of the district is held under this peculiar tenure, it is a matter of no little importance to both landlord and tenant to determine what share of the produce is payable as rent. Unfortunately the term abwabs has acquired in the courts an erroneous signification. It is generally translated to mean illegal cesses whereas there is nothing in the word itself which imports that meaning. A cess may be legal or illegal according to the circumstances of each particular case as applied to those dues claimed by the landlord. Under the bhowli system the term abwab may more correctly be translated manorial dues, *i.e.*, the dues which the landlord is entitled to under the established usage and custom of the country. Of course these dues vary in different villages and in different estates; but as a general rule it may be laid down that the landlord's share of the grain is seldom less than $\frac{9}{16}$th, and the ryot's share seldom more than $\frac{7}{16}$th. This fact is recognized by the people who have a proverb to the effect than the landlord's share is $22\frac{1}{2}$ out of every 40 passaris. It may be asked why the landlord should get more than half of the grain-produce and the cultivator less? To answer the question would involve a long disquisition on the pecularities of the bhowli tenure, but I may notice a few of the salient features of this system. In the first place the landlord does not in reality get a half share of the produce. He only gets a share of the grain. The straw, chaff, &c., is appro-

priated entirely by the cultivator. It will be noticed that the lower Court offered the defendant to divide the whole produce equally between him and the landlord, but this offer was refused, and why? Because it has always been the custom for a ryot to take the straw, &c. If so, the landlord should surely be allowed to plead that he is entitled to the dues he claims because the ryot has always been in the habit of paying them. Again the expenses connected with the maintenance of irrigation works on which depend the crop fall on the landlords; they also have to defray the costs of any litigation connected therewith. The very existence of the crops in the district depends on an artificial system of irrigation which has to be kept up at much expense. If system of payments in kind were converted into one of payment in cash the landlords would neglect to keep up these works, which under the present system it is for the mutual advantage of landlord and tenant to keep in good repair and working order. It must also be borne in mind that the landlord has to pay his Government revenue punctually in cash whether the season be good or bad, whereas the ryot having to pay in kind is not to the same extent affected by bad seasons. These and many other circumstances have to be taken into consideration in discussing the question of the bhowli system, and if a proper calculation were made it would be found that the $\frac{8}{15}$th of the grain-produce, which I fix for the sake of convenience as the maximum usually leviable by the landlord, does not as a fact represent half of the gross produce. In other words if the $\frac{7}{15}$th which represent the cultivator's share, plus the value of the straw, &c., were placed on the one side and the value of the $\frac{8}{15}$th of the grain, which represents the zemindaree share, minus the expenses incurred by him in the maintenance of irrigation works, establishment, interest on Government revenue paid in cash, &c., on the other, it would be found that the tenant had little cause of complaint. Applying the above general principles to the present case let us examine the dues claimed by the landlord (or lessee) and the proportion they bear to the grain-produce. The plaintiffs claim the following, *viz.*, the neg or landlords' due of 1 seer 4 chattaks per maund, the pansaras or harvest fee of 5 seers, the Budhawara 2 chattaks per maund for payment of the wages of the village watchman, the *Pahbi* 4 chattaks per maund for payment of the wages of the priest, the nocha, 8 chattaks per maund for payment of the wages of the village establishment, *viz.*, the putwari 2 chattaks, the gumashta 2 chattaks, the amin 2 chattaks, the salis 1 chattak, the nawisinda (clerk) 1 chattak, the *mangun* 30 seers per plough, the sidha 10 seers per plough (putwaris' due.) The putwari and Jeth ryots examined on behalf of the plaintiffs give clear account of all these dues and depose that they have been paid from time immemorial. The defendant Chullun Mahton actually has the assurance to depose that he has never heard of any of them! The aggregate of these dues comes to a little more than 2 seers in the maund, so that out of every 80 seers of grain produced the landlord claims a little more than 44 seers, leaving the tenant a little less than 36 seers. If the landlord claimed $\frac{8}{15}$th as his share he would get 45 seers out of every 80 seers, so that it is clear that in this case his claim is not more than the maximum which I have fixed as the landlord's share of the produce *in grain*. Of course in some cases it may be shewn that the landlord is not entitled to so much, in others he may, under peculiar circumstances the onus of proving which would rest on him, be entitled to more. It is quite impossible to lay down any hard-and-fast rule. Every case must depend on the evidence adduced by the parties, but there can be, I think, no doubt that if the tenants are led to believe that they can evade their just dues by calling them Abwabs in spite of the fact that they have been paying them from time immemorial the relations between the landlords and tenants in this district will become so unsettled that there will be no end to the litigation. It is the duty of the Courts to look carefully into these cases and not lightly to disregard on the one side the landlords' dues based on the established custom of the country, and on the other the ryots' remonstrances if they can show that these cesses are exorbitant and have only recently been imposed. In the present case the evidence adduced establishes two facts, 1st, that these dues have been collected and paid from time immemorial, 2nd that having regard to the peculiarities of the bhowli system they are not excessive. In the case of Budhua, Orawan Mahton (defendant) appellant, *v.* Jamadar Baboo Jugeshar Dyal Singh, plaintiff (Respdt.) XXIV W. R. P. 5, it was held by the High Court that certain payments which were not so much in the nature of cesses as of rent in kind and which were fixed and uniform, &c., had been paid by the ryot from the beginning according to local custom were not illegal cesses, and so in this case. I find that these so-called abwabs are not illegal cesses, and I may here notice that in many cases which have been tried by the Collector the putwari has succeeded in establishing, as against the zemindar, his right to these dues, and I hold, therefore, where the custom is proved, that the zemindar is entitled to levy a half share thereof from his tenants."

38. The above extract from the judgment of such an eminent, learned and experienced Judge as Mr. Porter, who had made himself thoroughly acquainted with the manners and customs of the people and affairs of the district, is not only important on the question of abwabs, but also indicative of the great danger which would attend the commutation of bhowli into nakdi.

39. In another case, the hearing of which occupied two months in recording evidence as to the prevalence of the custom in the district, legalising abwabs, the present subordinate Judge of Gaya, Babu Kali Prasanno Mukerji, came to the same conclusion, both on law and facts, at which the District Judge had arrived. The following passages in his judgment are worthy of notice and consideration :—

"Then I take up the 4th and 6th issues which raise the question of abwabs. The abwabs are claimed by the plaintiff both for the nakdi and bhowli lands. The nakdi

abwabs are following: (1) dustoor at one anna per bigha, (2) hoojutana or putwari's fees at one anna per ryot, (3) batta mal at 16 dams per rupee, (4) batta company at one anna per rupee. (5) Negdaree at 8 dams per rupee. The bhowli abwabs are (1) neg, (2) pasera, (3) sonaree, (4) badhwaree, (5) mangun, (6) nocha.

"Now with regard to the nakdi abwabs, the plaintiff claims them as part and parcel of the rent, and the collection papers show that the juma plus the Abwabs being taken together, the consolidated sum is shown as the nakdi rent of the ryot. Then the question arises whether these abwabs are legally recoverable or not, and whether the plaintiff can recover them from the defendant. It is argued on the defendant's side that these abwabs are prohibited by law. Now the statutory provisions with regard to the abwabs are to be found in sections 54 and 55, Regulation VIII. of 1793, and section III., Regulation V. of 1812. Now section 54, Regulation VIII. of 1793 says: 'The impositions upon the ryots, under the denomination of abwabs mohtot, and other appellations from their number and uncertainty having become intricate to adjust and a source of oppressions to the ryots, all proprietors of land, and dependant talookdars shall revise the same in concert with the ryots, and consolidate the whole with the asal into one specific sum.' This section does not prescribe any penalty if no consolidation is made of the abwabs with the asal juma. Section 55 only prohibits the imposition of new abwabs upon the ryots under any pretence whatever. Section III, Regulation V of 1812 says:—'That nothing herein contained shall be construed to sanction or legalize the imposition of arbitrary or indefinite cesses, &c.' Then it goes on to say 'the Courts shall enforce * * * payment of such sums as may have been specifically agreed upon between them' (parties). The present Rent Act (VIII of 1869 B.C.) in section XI. only prohibits the exaction of abwabs. So looking to all the statutary enactments it seems to me that the abwabs, as claimed by the plaintiff, are not prohibited by law. The plaintiff alleges that these abwabs have been paid by the ryots from ancient times. The evidence adduced on the plaintiff's side proves the existence of a long standing custom in this part of the country to take these abwabs from the ryots. In fact they are treated as a partof the rent. The whole sum including these abwabs is entered in the books as the ryots' rent. They are certain and definite in proportion, and there is no difficulty in adjusting them. They are not new impositions on the ryot, for they have paid and acquiessced in by the parties concerned from days of yore. It would not be incorrect to say that they have been consolidated with the juma. For the consolidated sum appears in the papers as the ryots' rent and the items are separately mentioned only for the sake of adjustment and calculation. These abwabs have a customary sanction for them; and it would be a disturbance of an established state of things, if the court of justice should raise their hands against them now. Custom, I should observe, is a part of the law of a country, and court of justice in administrating the laws of the land, ought not to interfere with the custom. The evidence on the plaintiff's side shows that these items have been all along realised from the ryots as well as from the defendant. This would show that they were acquiesced in both by the zemindar and the ryot, and it would be disturbance subverting the existing relation between those parties were the court to stop those dues now for the first time. I should therefore observe that there is no reason why the plaintiff should not recover the abwabs claimed. They are neither new impositions nor indefinite cesses. For they have been in existence from older times, and their proportions are fixed. So they would not come within the statutory prohibitions abovementioned. The plaintiff indeed calls them as abwab, but there is nothing sinful in a name. For call them as abwab or any other thing they have always been regarded both by the landlord and the tenant as a part and parcel of the rent. In fact the whole consolidated sum including them as shown in the papers as the ryot's total rent. Under such circumstance I do not see why they should not be recoverable as rent. The law gives no other defination of rent than this that what is given to the landlord by the tenant in return for the use of his land as rent and when the ryots have from the begining been paying these items as a portion of their rent to the landlord in return for the use and occupation of his land, I do not see how they can be regarded otherwise than as rent. I am, therefore, of opinion that these abwabs are not illegal and are recoverable at law, and when it is proved by evidence that the defendant has all-along paid them, I think the plaintiff is entitled to recover them from the defendant. The bhowli abwabs stand on a higher footing. For they are only certain proportions of the produce of the land. There is no legal enactment in force prescribing the landlord's share of such produce. The evidence on the plaintiff's side proves that according to the custom of this country half share plus the items called abwabs together represent the landlord's share in the bhowli produce, and this would make the landlord's share more than half. It is also proved that the defendant has all along paid this larger share to the plaintiff I am therefore, of opinion, that when custom sanctions this larger share for the landlord and the defendant also paid the same share in the previous years, the plaintiff is certainly entitled to recover it. The defendant does not say that these abwabs were levied after the permanent settlement or that they are now in a position. He says that these were never paid by him. This is certainly a false statement of the defendant."

40. Apart from my individual opinion, the judicial findings of these two learned judicial officers of considerable experience are sufficient to show that the so-called abwabs, nakdi and bhowli, in Gaya at least, are really part of the rent payable or deliverable to the landlord. Section 85 which contains a too general prohibition against abwabs, would have the effect of doing away with the so-called abwabs which are really part of the rent as pre-

velent in this district. While the ryots would continue to get the concessions and deductions which have been made in their favour, the landlord, under this section, will be deprived of a good part of his rent for no other fault than that he had allowed them to be entered in the village papers as a separate item, for the convenience of calculations and keeping up of accounts.

41. The provisions of sections 87 to 94 are altogether new and quite unsuited to the present condition of the peasantry and the agricultural requirements of the district. I have already shown that irrigation and other works of improvement in this district are constructed and maintained by landlords only, and, that it would be dangerous to put them into the hands of the ryots. The provisions of sections 88 and 89 will work very harshly upon a bhowli landlord, and by introducing a source of dispute in a matter on which there had hitherto been no difference, may ultimately lead to a collapse in agricultural improvements. The provisions for registration of improvements and recording of evidence, as contained in sections 91 and 92, however, desirable in theory, will not work well in practice. Considering the number of improvements that are daily made almost in every village, the Collector or revenue officer, appointed for the purpose, will be flooded with applications under these sections, and the proper, effectual and timely working of these sections would necessitate in our district the appointment of as many officers for the purpose as there are sub-divisions, and tax heavily the already drained purse of both landlords and tenants, and at least, these registers and records of evidence will only be corroborative evidence in the civil court whenever any question of improvement would arise between the parties in which the landlord will have to prove the improvements made by him by positive and direct evidence. So the game will not be worth the candle, while section 46 of the Bill imposes a sort of penalty on the landlord in that his suit for enhancement will be dismissed if he omits to register the improvements. The ryot is placed under no such disability for omission to register the improvements, if any, made by him. Section 90 gives power to non-occupancy ryots to construct suitable dwelling houses for himself and his family with all necessary out-offices, and section 87, sub-section 2, clause would make the construction of such buildings as improvements, and section 93 entitles such ryots, when they commit such acts as would make them liable to eviction to demand compensation from the landlord. There is no limit as to the nature of the building such ryots are to erect. They may erect a good costly pucca building and demand very heavy compensation for the same, which, in most cases the landlord might not be able to pay and thus be unable to seek ejectment, even where the law gives him the right to do so against a ryot who might have committed the grossest breach of contract and rendered the land under his cultivation quite unfit for the purposes of tenancy. There are many well-to-do persons of the class of mohajuns, mukhtears and amlas living in villages who do not care so much for cultivation as any how to annoy and trouble the landlords with a view to compel them to sell their estates to them. These sections therefore might, in the hands of unscrupulous ryots of this class, be made to work unjustly against the landlord. It will be extremely difficult, if not impossible, for the Collector to take the construction, maintenance and management of the irrigation works of this district, which, as detailed above are too numerous and intricate to be managed by Government officials, with that comparative cheapness and care with which the parties interested have done and will do.

42. In districts where, as in Gaya, lands, whether bhowli or nakdi, are measured every year, such a yearly measurement being absolutely necessary for a satisfactory settlement of accounts between the landlords and the tenants. The provisions of section 99 sub-section (2) which prohibits the landlord making any measurement within 10 years without the consent of his tenant or the written permission of the Collector, the exceptions (*a*) and (*b*) not being sufficiently explicit and wide to cover such yearly measurement, would seem to throw difficulties on the settlement of the annual accounts between the parties. The standard of measurement, prescribed in section 101, would fall far short of the standards which have prevailed in this district from time immemorial. There are two standard measurements prevalent in the district one for the Tikari Raj called the maharajee or *see purd* standard bigha which is equal to (180 feet × 180) and the other for the other estates of the district called the *ruptee* which is equal to (165 feet × 165 feet).

43. In a country where the Hindoo and the Mahomedan Laws of inheritance are prevalent every estate or tenure which is not joint now, is liable within the course of a few years to come under the joint possesion of the several heirs of its present single proprietor or holder, and as a matter of fact, such estates or tenures under single proprietors or holders are very few in number in this district. Thus the effect of the provision of Sections 102 to 108 which provide for the appointment of managers for joint estates tenures, would be to deprive the owners of about all the estates and tenures of their natural right and power to manage their own affairs, and to place them under the management of the Court of Wards, Collectors or Managers appointed by the District Courts.

44. The provisions of these sections will be seized by large and rich shareholders to reduce the income of their petty co-sharers with a view to compel them to give up or sell their shares, as the works of such management, must necessarily be very heavy and prove a great burden upon the estates or tenures most of which are already so encumbered. Owners of estates might avoid the appointment of managers under the Partition Act, but tenure-holders have no remedy whatever. Extremely emergent cases in which it might be necessary

to interfere by temporary attachment or otherwise, are sufficiently provided for, by Sections 26 and 27 of Regulation V. of 1812 and Regulation V. of 1827, and the Criminal Procedure Code, Chapter VIII., has given all Magistrates full jurisdiction to prevent breaches of peace; and Sections 73 to 76 of the Bill would enable any ryot, in cases of disputes between cosharers, to protect his own interests by depositing rents. There is, therefore, no justification either in the interests of the public or in those of the tenants and the joint landlords, for the introduction of such a measure as the one under consideration, which having the effect of depriving individual owner and tenure-holders of the right to manage their own estates or Tenures, will not, it is fervently hoped, commend itself to the Government of Lord Ripon, who is so eagerly anxious and benevolently disposed to confer the boon of local self-government upon the people of India.

45. It being now an open secret as admitted on all hands that the majority of the landlords and tenants of this part of the country, who besides the payment of revenue or rent, as the case may be, in regular and strict instalments, have to meet other public demands upon their hands by way of cesses and taxes, are in straitened circumstances and drowned in debts, they cannot be in a position, and ought not to be made to bear all the expenses incurred by Government in preparing the record of rights, table of rents and record of proprietors' private lands, however desirable and expedient the provisions bearing upon these points may be. To saddle them with the costs of such preparation would be like placing the last straw on the camel's back, the cost incurred in preparing the record of rights and table of rates being recoverable from the parties as arrears of revenue due by them. What the legal, not to speak of the *illegal*, costs of such preparation would be, can better be imagined and inferred from what is incurred by the parties in carrying on the butwara proceedings under Act VI. of 1876 for the mere partition of their estates by metes and bounds.

46. On the subject of distraint I take the liberty to submit that it is not, as is wrongly believed, the offshoot of the English Law. In the Hindu period not only distraint and imprisonment but assaults and tortures as well, as is well-known from history, were resorted to for the realization of debts, whether rents or any other. This practice was kept up by the Mahomedan rulers. The British Government could not tolerate the inhumanity and cruelty practised, either in the Hindu or Mahommedan period, stopped the old practice to which the people had been inured; but at the same time seeing that without some sort of coercion it was next to impossible to realize rents or revenue and "as the delay that must necessarily attend the institution of a law process for the recovery of every arrear would encourage persons destitute of good faith to withhold the public dues and render the collection of them a source of endless litigation," passed on the 1st of May 1793 Regulation XIV of that year, authorizing sales of lands with the sanction of the Governor-General and empowering Collectors to commit, under orders of the Civil Judge, defaulting proprietors to Civil Jail, and to place their estates under attachment until the arrear was paid off, leaving it to the proprietor to contest the justness of the demand and to prosecute the Collector, if he proceeded illegally, for false imprisonment, by suit in the Civil Court. On the same day, Regulation XVII of 1793, was passed prohibiting land-holders and farmers, under the penalty of criminal prosecution from confining or inflicting corporeal punishment on their rent-payers. But as the language of the preamble of that Regulation shows "it being as essential to the prosperity of the country and the punctual collection of the public revenue, that landholders and farmers of land should have the means of compelling payment from defaulters without being obliged to have recourse to the Courts of justice, and incurring the delay and expense necessarily attending a law process for the recovery of every arrear" expressly sanctioned and recognized the zemindars' power of distraining without sending notice to any Court of justice, or any public officer, "the crops and other products of the earth of every description, the grain, cattle and all other personal property, whether found in the house or on the premises of the defaulter or in the house or premises of any other persons" and of selling the same through Cauzee or District Court, subjecting them at the same time to heavy penalty on the complaint of the ryot, if their demand turned out to be unjust, and their procedure contrary to the rules therein laid down. Regulation III. of 1794 took away from the Collector the power of confining defaulting proprietors, but confirmed the power of summary sale of their estates, with the sanction of the Governor-General, for the realization of the arrears due from them. Regulation XVII of 1793, however, failed to afford landlords that facility for realization of rents, which they required to enable them to discharge their liabilities to Government. The necessity for further legislation becoming apparent Regulation XXXV of 1795 was passed. Beginning with the preamble "Government not admitting of any delay in the payment of the public revenue recoverable from proprietors and farmers of land, justice requires that they should have the means of levying their rents and revenues with *equal punctuality*," in addition to the power of distraint which it improved, it provided for the realisation by landlords, of rents by a summary application to the Judge, after serving notice of demand on the defaulter, for any sum exceeding 500 rupees which could not be recovered by distraint of the personal property of the defaulter. Still the above provisions both as regards the payment of Government arrears by landlords, and payments to the latter of their rents, were found ineffectual, so much so that in July 1799 some of the members of the Board of Revenue "recommended," says Mr. Field in his introduction to the Regulations page 80, "and strongly urged a recurrence to the former practice of confining the "the landholders for enforcing the payment of arrears." Accordingly on the 29th of August 1799 Regulation VII. of that year was

passed. Its preamble ran as follows. "The powers which landholders and farmers of land paying revenue to Government are at present allowed to exercise for enforcing payments of rents due to them from their under-tenants, having in some cases been found insufficient, a considerable delay having also of late occurred in the payment of the public revenue due from many of the landholders which though ascribable in some instances to the cause above mentioned can in others be imputed only to a want of good faith on the part of certain of the zemindars and other landholders who taking *advantage of the delay with which the process of disposing of their lands unavoidably attended, have withheld the payments of their instalments until the day appointed for sale.*" By this Regulation, therefore, the rules and power of distraint as laid down in the Regulation XVII. of 1793, were considerably improved and simplified so as to expedite the recovery of rent by that process, and so also the rules for summary application to the Judge under Regulation 35 of 1795 were amended, the Board of Revenue got full power of ordering sales without reference to Government, and the Collector the power of attaching estates of the defaulting proprietors. The sale procedure underwent further modifications in the subsequent Regulations and Acts and with it also the landlord's summary procedure of realising rents. A careful perusal of the Regulations and Acts, repealed and unrepealed, down to the year 1859 would establish beyond all doubt that any improvement in the law effected to secure to Government prompt and timely payment of revenue, was attended with corresponding changes and improvements enabling landlords to realize their dues from the rent-payers under them with like promptitude and punctuality and, that from the very beginning the legislature saw and recognised the injustice of driving landlord to the necessity, in every case, of bringing ordinary regular suits in the Civil Courts, while Government itself possessed and enjoyed a simple and summary sale procedure of recovering arrears, of revenues from them — an injustice which it always anxiously sought to avoid. But the year 1859 witnesses a sudden change in this wise and long observed policy of Government. By Act XI. of that year the summary sale procedure for the realisation of Government Revenue, is made more simple and expeditious than before, but Act X. of that year does not only deprive landlords of the right of summary suit, or application which they had enjoyed ever since the year 1795, but, crippled and mutilated very much the power of distraint which they had exercised from time immemorial, both before and after the passing of Regulation 17 of 1793. The Laws and Regulations which it repealed had given to the landlords power of distraining all the personal property of their defaulting tenants wherever placed or removed, but section 68 of Act VIII. of 1869, B. C. (which is re-enactment of Act X. of 1859) makes only the *produce* of the *land*, for which the rent is due, as liable to distraint, and only for one year's arrear. Section 72 compels him before distraining, to serve a notice of demand upon the tenant, and section 75 gives him liberty to seek the assistance of the Court in cases in which he apprehends resistance. After service on the tenant under section 73 of a list of the property distrained, section 78 entitles him to apply to Court for sale within five days after distraint, and section 80 leaves no discretion in the Court but to depute an officer to hold sale, and to serve notice upon the tenant either to pay or institute a suit to contest the demand within 15 days. If no payment be made or no suit brought within that period, the sale must proceed. A ryot resisting or forcibly or clandestinely removing is liable under section 101 to imprisonment for six months in the civil jail, or until he pays off the arrear for which the distraint was made. None of these provisions were new, but only re-enactment with material modification of the provisions of the repealed Regulations. Sections 80, 81, and 82 give the ryot power of contesting the demand and of getting the sale suspended by a suit in which the onus of proving the correctness of the demand lies, under section 95, on the landlord. A ryot who omits to sue, within the period of 15 days, may yet bring a suit for damages under section 97. Section 98 also gives him the right to sue for damages where the powers of distraint have not been exercised in accordance with provisions of the Act, while section 99 subjects an authorized distrainer to damages, as also to a penalty of a fine of 300 rupees or imprisonment for two months. These provisions of the present law secure to the tenant greater protection against abuses of the power of distraint than he had under the Regulations. Since 1869 circumstances have altered and new liabilities have been imposed upon the landlord so as to necessitate the sengthening of his power of distraint rather than taking away or weakening it. The landlord now is not only responsible, and his property liable to sale, not only for Government revenue, but for road and public works cesses, whether payable by him, or by his tenants. "Government not admitting of any delay in the payment" of public demands payable by proprietors, not only on their own account, but on that of their tenants as well, "justice requires" now as it did for a period of upwards of sixty years before the passing of Act X. of 1859 "that they should have the means of levying their rents and revenues which *equal punctuality*;" and the reason that "the delay that must necessarily attend the institution of a law process for the recovery of every arrear would encourage persons destitute of good faith to withold the rent due from them and render the collection of them a source of endless litigation" is stronger now than it was before. The "delay and the expense necessary attending a law process for the recovery of every arrear" having now increased by more than three times, it is more "essential to the prosperity of the country and the punctual collection of the public revenue that landholders and farmers of land should have the means of compelling payment from defaulters without being obliged to have recourse to the courts of justice" by regular suit, now than it was then. But it is disappointing to find that the Bill by sections 139, 140, and 141, compels the zemindar to go to Court for an order for distraint, and prove

his claim with such evidence as he would have to adduce in regular suit, and gives to the Court a discretion either to grant or refuse his application, or even delay the proceedings by which the object of distraint might be defeated, as the ryot might in the meanwhile remove the crops for which he would have strong temptation. The issue of a prohibitory order against the removal of the crops pending the proceedings is also left to the discretion of the Court. Such a distraint as this, in my humble opinion, is no distraint at all. It will neither save the landlord from expense of litigation nor give him the means of recovering his rents with that "punctuality" which would enable him to discharge the public demands upon his lands. In my humble opinion the present law of distraint which protects the interest of both the parties should be left as it is. If any revision is desired it should be more in favor of the landlord whose liabilities have increased than in that of the ryot. The experience of the past has clearly shown that without some coercie measures, "it is impossible to secure punctual payment. The number of persons "destitute of good faith" is not less among the Behar peasants than in those of elsewhere, and it is only the law of distraint, as it is in the law in force, that operating as a moral force, has helped the realisation of rents. The position of a landlord with a summary sale law and certificate procedure, hanging over his head threatening to sell all, and, with tenants under him, having the power and option the Bill proposes to give them, of withholding and delaying punctual payment of rents, and subjecting him to the trouble, vexation and expense of going to Court for every arrear, is certainly a miserable position. The power of distraint has no doubt been abused and sometimes carried beyond its legitimate objects, but that is due more to the ignorance of both the the landlord and tenants, that to any defect in the law itsef. There is hardly a landlord or tenant in Guya, who knows any thing of the law governing the relation of landlords and tenants. Both parties have been acting and conducting their affairs on traditions and long standing orthodoxical, and conservative beliefs and habits. And what appears to us as tyrannical and illegal is not considered so by the real actors and the actual sufferers. The present state of things which the Bill tries to improve can only be remedied by spread of education and knowledge.

47. I might be permitted to add that the more easy and simple the position of a landlord is made by legislation, the more likely he would be to treat his tenants with kindness and justice. Nothing short of a simple procedure for realising his rents, whether nakdi or bhowli would better his condition and his relation with his tenants. Having considered the chapter of the Bill on judicial procedure in the light of the experience which I have gained in the trial of rent suits, I have been persuaded to think that suits for arrear of rents based upon registered documents or other reliable and trustworthy writings such as printed counterfoil receipt, bound and regularly paged printed form of measurement, laggits, and danabundi papers, might with advantage be governed by the Small Cause Courts Procedure, Negotiable Instruments, or, by re-enacting with necessary modifications and provisions for summary applications for realization of rents, which were in force before the passing of Act X of 1859.

48. If there have been oppressions and extortions on the part of the landlords, there have been equally systematic temptations and combinations on the part of the ryots to withhold and delay the payment of rents unless compelled; and if in justice and fairness ryots are entitled to legislative protection against oppressions and extortions, the landlords are equally entitled to legislative assistance for recovery of rents with *punctuality* and *promptness*.

49. I might here be permitted to take this opportunity of stating in plain and unmistakeable terms that the views which I have expressed in this report are in strict consonance with what I have entertained on the subject from a long time, and are in no way inconsistent with, or antagonistic to, what I have given expression to from to time regarding the necessity of revising the Rent Law, and of thus removing a misunderstanding or misinterpretation of my views, which seems to have prevailed in some quarter by the publication of a solitary and isolated piece of extract from my report of 1877. In that report as well as in those which preceded and followed it, I did not only describe the miseries of the ryots of the *Ryain* class, but also the difficult situation of landlords with respect to the turbulent fighting and intriguing ryots of the Soorfa class, and showed that both ryots and landlords required legislative protection against each other.

50. In conclusion I have only to observe that although I am not blind to the necessity of a revised Rent Law, which will serve to redress the grievances of both land lords and tenants, yet I am more alive to the fact that the more complex and intricate the law relating to landlord and tenants is made, the greater the difficulties of agriculture, and expense of litigation, and the worse therefore, the condition of both. No legislation, however, strong, well-meaning, and clearly defined it may be, will help to ameliorate the condition of the agricultural community unless it tends to promote good-will and cordial feeling between the landlords and the tenants.

51. Lastly I have to offer you my best and warmest thanks for the honor you have done me by giving this opportunity of expressing my views on a subject of such grave importance, and to solicit your indulgence for the many defects and shortcomings, which are undoubtedly to be found in this report, but which are attributable, not to any want of zeal or interest on my part in the subject, but to a feeble and failing health which is gradually undermining my constitution.

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No. 123, dated 29th December, 1884.

From—Secretary, Central Committee of Landholders of Bengal and Behar,

To—Secretary to Government of India, Legislative Department.

I have the honour to forward herewith the memorial adopted at a general meeting of the landholders of Bengal and Behar held at the Calcutta Town Hall on the 19th instant, and to request that you will submit the same for the consideration and orders of His Excellency the Viceroy and Governor-General in Council.

*To—His Excellency the Viceroy and Governor-General of India in Council.*

The memorial of the Zemíndárs, Taluqdárs and other Landholders of Bengal and Behar, in meeting assembled—

HUMBLY SHEWETH,—That your memorialists are the descendants, or the representatives, of the zemíndárs, as they are called, with whom the Marquis of Cornwallis made in 1793 what is known in history as the Permanent Settlement of the land revenue in the provinces of Bengal, Behar, and Orissa.

2. That much discussion has taken place as to the actual *status* of the zemíndárs at the time when this settlement was made, its opponents generally maintaining that the zemíndárs were mere collectors of the land revenue and held no proprietary rights in the soil.

3. That without entering upon this discussion, your memorialists believe that it is now generally admitted that, while this contention may have accurately represented the *status* of a small number of the zemíndárs, the great body of these gentlemen were the owners of the land in the only sense in which ownership thereof was recognized by the Muhammadan law, which prevailed in the provinces, and had prevailed for centuries, before their administration was transferred to the East India Company.

4. That that transfer was made by the Mogul Emperor Shah Alum in the year 1765 by an express grant under an Imperial firman bearing date the 12th August.

5. That the nature of the land revenue, the right to which was made over in perpetuity by that firman to the Company, was very imperfectly understood until long after its acquisition.

6. That all doubt upon the subject has been cleared up by the researches in particular of the late Colonel Galloway, the late General Briggs, and Mr. Neil, B. E. Baillie, author of "The Muhammadan Law of Sale," "The Muhammadan Law of Inheritance," and "The Land-tax of India, according to the Muhammadan Law," the authority of whose writings has long been considered unimpeachable in the Law Courts of the Empire.

7. That the last-named of these authorities opens the preface of the last of these works with the following impressive statement:—

"The most important of the rights acquired by the East India Company by cession or conquest from its predecessors in the Government of India is the *khiráj* or land-tax, which has existed in that country from early times, and was probably imposed upon it soon after its conquest by the Muhammadans. In Bengal the right to this tax was conferred on the Company by an express grant from the Mugal Emperor Shah Alum, under a firman bearing date 12th August, 1765; and neither in that presidency, nor in any other part of India, have the East India Company, or their Local Governors, ever pretended to any greater rights in respect of this particular tax than belonged to the preceding Governments under the acknowledged law of the country. It has, therefore, always been considered a matter of importance to ascertain as correctly as possible the nature and limits of that tax according to the Muhammadan Law, which was not only the general law of the country, but was more especially that which determined the rights of the Government and the people to each other."

8. That it was this law which the East India Company undertook to maintain and administer under the Imperial Firman of 1765, and to which they were required to adhere strictly by 21 George III, Chapter 25, section 39, under which Act the Court of Directors were required to give orders for settling and establishing "upon principles of moderation and justice, according to the laws and constitution of India, the permanent rules by which the tribute, rents, and services of the *Rájás, Zemíndárs, Polygárs, Taluqdárs*, and other native landholders should be in future rendered and paid to the Company."

9. That in obedience to the orders of Parliament thus registered, Lord Cornwallis, after protracted and earnest enquiry into the assets of the land and the rights and privileges of dependent tenure-holders and cultivators of the soil, determined to commute the immemorial State claim to a share in the produce of the soil at a money rental amounting to about three crores of rupees, admitting of no alteration, and fixed permanently upon the soil itself; and in the firm belief that he would thereby best promote the interests of all classes of the people and the interests of the East India Company's treasury, declared the zemíndárs, *whatever they were before*, the proprietors of the soil, His Lordship's avowed intention being to preserve, or to create, in the Bengal Provinces a landed aristocracy after the model of the same great body in his own country.

10. That the Regulations which embodied this settlement, as it was called, defined the rights of the different classes of dependant tenure-holders and cultivators of the soil, and declared that, subject to certain prescribed restrictions regarding lands in the possession of the then resident raiyats or cultivators, "the zemíndár or other actual proprietor is to let the remaining lands of his zemíndari or state," &c. &c., "in whatever manner he may think proper." The Regulations further declared that they, the zemíndárs, "would enjoy exclusively the fruits of their own good management and industry," and that "no power will then exist in the country by which the rights vested in the land-holders by the Regulations can be infringed or the value of landed property affected.

11. That owing to the assessment imposed upon the zemíndárs being fully ten-elevenths of the gross rental payable to them, and to economic and other causes, this fixed annual payment was far beyond the power of the zemíndárs to bear. These causes were the complete exhaustion of the provinces by the long period of misrule which preceded the Company's acquisition of the Díwaní as it was called, in 1765, and the remorseless exactions which followed on the part of the Company's servants; partly also from mistaken estimate of the resources of the people; partly from the cruel extortions of the men to whom the revenues had been "farmed" for collection; and partly from the dreadful famine which desolated the provinces in 1770, and in which ten millions of the people are believed to have died of hunger or disease, with the effect of reducing two-thirds of the cultivated area of the provinces to jungle.

12. That the assessment proving too grievous to be borne, the result of the settlement was speedily seen in the ruin of masses of the zemíndárs within seven years, and the threatened extinction of the entire class, their estates reverting to the Government. So great, indeed, was the extinction thus effected of old families of landholders, that the number of zemíndárs of the present day with whose ancestors the settlement was made, represents an insignificant fraction of the total, the great body of landholders having come into the possession of their estates by subsequent purchases.

13. That your memorialists have recalled these facts only to show that, although conceived with the most benevolent intention, the settlement which was thus made with their ancestors and predecessors was not one of their own seeking, or for their own advantage, but was imposed upon them to the immediate ruin of a multitude of old families in the provinces of whom your memorialists are survivors or successors.

14. That happily for your memorialists, the blessings of peace which followed upon the establishment of the Company's rule in these provinces led very rapidly to a great increase in the population, and to a wide extension of the acreage under tillage. Land which had relapsed into jungle, and wastes that had never before been cultivated within the memory of man, under the assistance and encouragement of your memorialists were brought under the plough, until the assessments which were at first ruinous to them became lightened by being spread over a wider area of tillage, and by the great change which has gradually taken place in the value of money during the century of years that has gone by.

15. That your memorialists having represented the manner in which the settlement was made, have now to solicit your Excellency's regard to a short history of the measure which threatens to interfere seriously with the rights and privileges secured to them by that settlement.

16. That since the trial of rent-suits was transferred in 1868 by an Act of the local Legislature from the Revenue Courts to the regular Civil Courts of the country, landholders have experienced great difficulty in recovering arrears of rent by reason of the heavy expenses and delays incidental to the procedure of such Courts. When, therefore, Government imposed upon them in 1870 an obligation to collect the road-cess from their tenants, and to make good to Government all deficits in collection of the same, Government promised to enact a law for giving them summary powers for the recovery of both rent and cess. This promise was repeated in 1875, when a similar obligation was imposed upon landholders for the collection of the public works cess for Government.

17. That in the year 1876 Government brought a Bill into the Local Council with the avowed object of giving landholders facilities in the collection of rent and cesses, but the objection was then raised for the first time that no such facilities could be given without making changes in the substantive law regulating the relations of landlords with their tenants. The Government at last appointed in 1879 a Commission for the purpose of drafting a Bill relating to landlord and tenant, on principles which might appear to them just and proper. This Commission, known as the Rent Compision, drew up a report upon the subject in 1880 and drafted a Bill enbodying the recommendations contained in their report. The Bill was designated the Rent Bill, but upon publication its provisions were found to be based upon such obvious delusions as to facts, and so subversive of the interests in which it professed to be drafted, that it was abandoned almost immediately. Since then Bill after Bill has been drafted with no better result; and at last a Bill has been introduced into the Viceregal Council, known as the Bengal Tenancy Bill, which subverts the vested rights of your memorialists, ignores altogether the authority and the accepted interpretation of the old regulations and innumerable deliverances of previous Administrations and of Her Majesty's Judges on the

subject, and which is so opposed to the economic conditions under which cultivation is carried on in Bengal, and so violates immemorial customs, usages and rights to which the people cling, that the measure will, if it becomes law, plunge the provinces into inextricable confusion, and produce a sea of litigation such as the world never before witnessed.

18. That your memorialists now find themselves in this position, that after nearly a century of supposed proprietorship of their estates the Bill practically confiscates their proprietary rights altogether. Their ancestral rights, extending back in a multitude of cases to time immemorial, as well as the rights which were forced upon them in 1793, are by this Bill to be legislatively declared non-existent, or to be swept away on the monstrous pretence that they have been oppressive, rackrenting and evicting landlords, the notorious fact being that so unwisely low have been the rentals they have levied, that a great mass of middlemen have grown up between them and the cultivator, who are living upon the margin of the rental which your memorialists had abandoned to the cultivator.

19 That these grave charges are so wholly unfounded that they could never have been framed had any inquiry whatever preceded the measure. Enquiry would have shown that so great—they may say truthfully so mischievous—has been the moderation with which they have asserted their rights, that the cultivator (raiyat) has long become the virtual landlord over wide districts of these provinces, and that your memorialists find great difficulty in collecting the rent admitted to be due by him. That the Government is well aware of this fact, and has itself experienced so much difficulty in realising or enhancing the rents due to itself on the estates that still belong to it, that it has had to pass Act after Act on its own behalf to enable it to beat down the opposition which the cultivator raises to the payment of any just rent whatever, however moderate.

20. That your memorialists cannot speak the sense they have of the wrong that is being done to them by branding them with oppressions that have never been practised by them, and that the slightest enquiry would show to be imaginary. That your memorialists believe the Government itself has at last become aware of the delusions under which Bill after Bill has been brought forward, only to be shown to be practically impossible and abandoned. That your memorialists appeal earnestly to Your Excellency to arrest the present measure, and to compel the institution of those enquiries which your memorialists affirm will show at once the delusions under which the measure has been drafted.

21. That your memorialists claim, as a matter of unquestioned right, to be entitled to collect in perpetuity under the settlement, and on their own behalf, what they were collecting before that settlement on behalf of the Government. That Lord Cornwallis himself forced them into this position by imposing the settlement upon them, exacting from them as its price the perpetual annuity which they are still paying in consideration thereof. And that your memorialists have used the rights conferred upon them by the settlement with conspicuous moderation is susceptible of the simplest and most conclusive proof.

22. That should the measure be preserved with and become law under the strange delusions in which it has been conceived, it will not only be, your memorialists submit, a breach of faith, but will confiscate numberless rights in the soil which have existed from time immemorial, and been respected by every conqueror thereof, will unsettle the relations of every man with his fellow, and plunge sixty millions of people into a boundless sea of litigation. That your memorialists, therefore, implore Your Excellency that before this measure goes any further, the question of the rights vested in your memorialists by the settlement of 1793, and of the power, if any, reserved to Government for interfering with those rights, be submitted to Her Majesty's Judges for adjudication after hearing counsel, and that a Commission of Enquiry may be appointed publicly to receive evidence of the charges which have been brought against your memorialists and assumed to be true in the teeth of every reasonable presumption that could be given that they are wholly and altogether false. Your memorialists are to be ruined, their estates confiscated, their character traduced, and ancient institutions concerning the land abolished, which are to this hour the economist's "ideal" in Europe on the gratuitous opinion of a small number of officers under the Government of Bengal, that it would improve the relations that now exist between your memorialists and their tenantry were these officers allowed to recast them all upon certain views of what they call "tenant-right," the tenants of your memorialists themselves praying earnestly that the customs, rights, and usages which this measure sweeps away may be preserved as vital to their continued well-being.

23. That your memorialists crave reference to the many memorials and petitions which they have heretofore submitted to the Government of India and to Her Majesty's Secretary of State in Council for India with reference to this Bengal Tenancy Bill. They have therein shown that no cause of necessity has been made out for any radical changes in the land-law of the country; that the Settlement Regulations do not warrant the assumption by Government of a power to take away by legislation, in the way they purpose to do, the rights vested by that settlement; that the Bill rests on an entirely erroneous view of the status and rights of landholders before and after that settlement; that if passed into law it will prove a source of endless litigation between the zemíndár and raiyat; and that the effect of its operation on the economic condition of the people will be disastrous in the extreme.

In the full conviction that Your Excellency will listen to their reasonable prayer for an opportunity of vindicating their rights, and for an enquiry into the charges against them, upon which the Bill rests, your memorialists humbly pray that Your Excellency will, after taking into consideration the facts and arguments above set forth, be pleased to suspend the further consideration of the measure until the representations of your memorialists have been considered by an impartial and competent tribunal.

And your memorialists, as in duty bound, will ever pray.

LAKSHMESHWAR SINGH, OF DURBHUNGA,

*Chairman.*

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*To His Excellency the Viceroy and Governor-General of India in Council.*

The humble memorial of the Khas Mehal ryots of Government Estate Jalamuta, villages Paikbhera, Harmasah, &c., District Midnapur.

MOST HUMBLY SHEWETH—That the rights which khas mehal ryots as well as other ryots have to the land they cultivate are recognized by custom all over the country. That the British Government too has repeatedly recognized these rights, specially by the Regulations of 1793.

That it may be safely asserted to be a fact, that these rights embrace all the incident of full proprietary rights subject only to the customary land tax due to the State.

That notwithstanding these facts, in the case of khas mehals, the Government has practically ignored the rights of the ryots by placing itself beyond the powers and jurisdiction of the courts of law.

That in all cases of conflicting interests between the Government and khas mehal ryots, the present law is, to leave the settlement of such matters to the discretion of the executive officer of Government, who represents only one of the parties to the disputes in these cases. That, in short, the settlement officer is his own law as regards the justice or injustice of act done by him.

That such a state of things is not reasonable and proper, your Excellency's memorialists need hardly say. That however well-meaning or discreet a person may be, he can never be expected, nor can he himself honestly trust, to keep the balance of justice evenly between him and another person to whom he is opposed.

That it may be thought, in comparing between settlement officers and zemindars in relation to the ryots that the former are disinterested, and the latter interested in oppressing and rack-renting ryots. That it is not quite correct to think so. For if the zemindar is interested in taking as much from the ryot as possible, his permanent relations with the ryots cannot but inspire him with a great measure of sympathy for the ryots, while the settlement officer has, on the one hand, no cause to feel that sympathy for the ryots, but on the other, he has nearly the same sort of motive to rack-rent the ryot as the zemindar, the difference being that the motive of the one is to please himself and that of the other to please his superiors

That the Government itself in 1793 was earnestly anxious to prevent the evil which your Excellency's memorialists are complaining. That this will be apparent from the following extract from the preamble to Regulation of 1793 :—

"The collectors of the revenue must not only be divested of the power of deciding upon their own acts but rendered amenable for them to the Courts of Judicature and collect the public dues subject to a personal prosecution for every exaction exceeding the amount to which they are authorized to demand on behalf of the public and every deviation from the Regulations prescribed for the collection of it."

That according to the present law, the foregoing principle of justice and equity enunciated by the Legislature of 1793 stands violated on two points of vital importance to your Excellency's memorialists, *viz.*, on the point of adjustment and enhancement of rent and on the point of the realization of rent.

That Act VIII of 1879 and VII of 1880 have only to be referred to to show how flagrantly these two Acts violate the principle mentioned in the Regulation.

That as regards the working of Act VIII of 1879, your Excellency's memorialists trust that your Excellency is already aware how in the case of your Excellency's memorialists and other khas mehal ryots of Midnapur, the said Act has been worked to reduce your memorialists to destitution and ruin by enhancing their rents far above the prevailing rates of the neighbouring private zemindars, and all this, while the Government is fully aware of the unfertile and arid condition of the lands your memorialists occupy and also of the fact that they always live with the apprehension of famine before them at the least failure of a crop.

That Your Excellency may have been informed that some of the brother khas mehal ryots of your memorialists appealed to the High Court, while the majority including your memorialists were too poor to carry on litigation and have been compelled to put up with the state of destitutions to which they have been reduced by the settlement proceedings in question.

That your memorialists are bound to say that khas ryots of other quarters may feel themselves somewhat relieved, seeing that the present Rent Bill intends to repeal Act VIII of 1879. But your memorialists most humbly submit that the repeal of Act VIII of 1879 comes too late for your memorialists, as that Act has already done its work of destruction as regards themselves.

That Act VII of 1880, to which your Excellency's memorialists have referred, gives the Revenue Officers powers of a peculiar character. Whenever they have any claim against a ryot for arrears of rent, they can convert that claim according to their pleasure into that solemn and irrevocable instrument of justice called a decree. That no doubt the law requires a notice to be served upon the ryot to apprize him of the intentions of the Collector. But as a matter of fact, it is well known that such notices as a rule are not served. That in many cases the tenant learns of the proceedings when all his properties, moveable and immoveable, are about to be hammered down to a stranger.

That the outrageous character of such proceeding will be apparent when your Excellency kindly considers that generally the responsibility of the proceeding does not rest really on the Collector or Deputy Collector but on patwarees or petty collecting sarkars. That men of this class are no better than patwarees under zemindars and are by no means above temptation such as might lead them in many cases, not to give full credit to the ryots for payments made. That the Collector's records are made on the faith of these men. That yet the ryot is placed by the above Act in such a hopeless position to contest the correctness of the demands made on such a basis.

That your memorialists earnestly pray that your Excellency will be pleased to provide for your memorialists all the safe-guards to protect the rights of your memorialists against the arbitrary acts of settlement officers, which Government has justly thought its duty to provide in the case of ryots of private zemindars.

That, in short your memorialists pray that the Government will be pleased to extend to khas mehals all the rules and provisions contained in the present Rent Bill in favor of ryots by repealing in addition to Act VIII of 1879, also Act VII of 1880 and such other Acts.

That the points on which there should be a difference between the case of the ryots of private zemindars and that of those of khas mehals are points on which, according to reason and justice, there should be a difference in favor of khas ryots, and that, on such points, more favorable provisions should be made in the case of khas mehal ryots than in the case of zemindari ryots.

That your memorialists will mention two such points:

*First*, that in khas mehals, all ryots whatever should be declared occupancy ryots, as there is no reason to make any distinction as regards khas mehal tenants between some ryots and others, dividing them into occupancy and non-occupancy ryots. That such a distinction does not in fact exist.

*Second*, that inasmuch as Government, unlike private zemindars, does not, in many cases, resort to enhancement proceedings to raise the rents of individual and isolated ryots only, but it proposes to raise the prevailing rates of a whole mehal whenever it has recourse to settlement proceedings, the interval which the law should require to elapse between one settlement and another should be extended at least to 30 years, though the interval may be only 15 years, in the case of zemindari ryots, in whose case wholesale enhancements of entire mehals is not usual.

That Your Excellency's memorialists would also venture to submit that the chapters in the Rent Bill empowering Government to make records-of-rights and settlement of rents should be omitted from the Bill.

That your memorialists earnestly urge this, as they have by bitter experience learnt that the executive officers of the Government failed to exercise powers like these with any degree of satisfaction, your memorialists' prayer is that the Government may be empowered to constitute temporarily judicial Boards presided over by judicial officers to exercise the said powers.

That Your Excellency's memorialists also submit that the ground of enhancement based on an increase of price is not a proper ground. Because high prices mean great distress to men of the class of your memorialists who, for portions of the year, have to buy food grains. That then again, if there is a tendency to a gradual rise of price of food-grains your Excellency should kindly remember that there is also a tendency of the soil becoming less productive. That therefore setting the one tendency against the other, the law should remove this ground of enhancement which is a creation of recent times.

That your memorialists also beg to submit that, by long existing custom and tradition, tanks and reservoirs of water as well as common pasture grounds which used to be left in each village as khas pateet, were not assessable with rent. That recently, settlement officers have begun to assess such lands, that your memorialists beg to say that this is improper and unjust. That by the common law of the country and by the provisions of Hindu law the king should not levy land revenue on lands of the above description.

Your Excellency's memorialists earnestly crave your Excellency to consider your memorialists' grievances and kindly to remedy them. Your Excellency's memorialists pray that Your Excellency will order a reasonable reduction of the extraordinary high rates to which the rents of your memorialists have been raised by the cruellest rack-renting process, and also that the Rent Bill be amended so as to meet their grievances.

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Dated 27th December, 1884.

From—Babu Sarat Chandra Mukhopadhyay,

To—Private Secretary to His Excellency the Viceroy.

I have the honour to forward herewith a memorial signed by myself and my brother landholders of the district of Rungpore, and to request that you will be pleased to submit the same to His Excellency the Viceroy for his orders.

*Memorial of Proprietors and Talukdárs of Rungpore District.*

*To—His Excellency the Viceroy and Governor General of India.*

The humble memorial of the undersigned Proprietors and Talukdárs of the District of Rungpore in the Province of Bengal.

MOST RESPECTFULLY SHEWETH,—That the rumour that a Bill, contemplating radical changes in the law which governs the relation of landlord and tenant in the provinces of Bengal and Behar has been introduced by Government, has so much disturbed the agrarian economy of the part of the country to which your memorialists belong, that the tenants have been emboldened to withhold payment of rents and deny their yearly rentals in many instances, and generally to assume an unsatisfactory and hostile attitude towards them.

The changes contemplated in the Bill which is now before a Select Committee of the Legislative Council are all in the direction of the expansion and enlargement of the tenant-right to the derogation of the rights of your memorialists.

That although hitherto, with the exception of a short period, the judicial determination of disputes and the adjustment of relations between landlord and tenant were left, as a part of the general administration of justice, to the constituted tribunals of the land, and the system has worked eminently well from the time of Lord Cornwallis downwards, still it is contemplated in the Bill to vest in the executive officers of the Crown semi-judicial functions of deciding questions relating to the status of tenants, the nature of their rights, the fixity of their tenures, and, what is still more a matter of grave anxiety to your memorialists, the validity and fairness of contracts on behalf of the tenants; and the most important of these functions will have to be performed not by the chief executive and presumably most experienced officer of each district, but by subordinate agency in the Revenue Department.

That the Bill proceeds mainly on the assumption that the tenantry of these provinces are rack-rented and subjected to wholesale eviction at the hands of the landlords; that the assumption is wholly disproved by forensic statistics.

Your memorialists would beg humbly to invite Your Excellency's attention to the figured statements given every year in the Report of the Administration of Civil Justice, recorded and circulated to the subordinate courts by the Honourable High Court of Calcutta.

That they find that from 1875 to 1880, a period of six years, the total number of ejectment-cases instituted throughout Bengal and Behar was only 10,799, which gives an average of nearly 1,800 per year; dividing this number by the number of districts under the Honourable High Court, the yearly average of ejectment-cases for each district is about 43.

Your memorialists further beg most respectfully to bring to Your Excellency's notice that it would be found on enquiry that the rate of rent in all parts of Bengal and Behar is invariably moderate, and in the majority of instances extremely low; and they earnestly submit that a thorough enquiry by a duly constituted Commission should have preceded the introduction of the Bill.

But your memorialists regret that not only was there no enquiry on this vital point, as also on other matters on which legislation has been based, but oppressive conduct on the part of your memorialists in enhancing rents and evicting tenants having been postulated, and certain doctrines and principles with regard to the nature of the rights of the tenants having been postulated, the Bill proceeded in the lines of the aforesaid views and proposed supposed remedies; that although long subsequent to the introduction of the Bill, the executive officers of the Government of Bengal and a few judicial officers were consulted, the reports submitted by these gentlemen were based, not on the results of investigation, but on their individual views and sentiments; that His Lordship, the Chief Justice of the Calcutta High Court, as also another Judge of the same august tribunal, the Honourable Justice Field, two of the most eminent and learned Judges of the Honourable Court, both condemned the main provisions of the Bill.

That the leading and well-informed newspapers of this Presidency have also strongly disapproved of the Bill.

That under the above circumstances your memorialists respectfully but earnestly entreat Your Excellency to abandon the Bill, as it is wholly uncalled for, as it threatens to embitter the relations between your memorialists and the tenantry which were hitherto entirely satisfactory, and as it threatens to open the flood-gates of protracted and ruinous litigation and also be the resources of the nation in law expenses amongst an impoverished people.

And your memorialists as in duty bound shall ever pray.

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Dated 8th January 1885.

From—BABU RAJKISSORE MUKERJEA, Utterpara,

To—The Secretary to the Government of India, Legislative Department.

I have the honour to forward herewith a memorial to His Excellency the Viceroy signed by me and a number of vakils of the High Court practising at the High Court and Hooghly

in connection with the Tenancy Bill now under consideration of His Excellency's Legislative Council.

Sixty spare copies of the memorial are herewith submitted.

Hoping you will lay it before His Excellency and his Council.

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*To the Viceroy and Governor General of India in Council.*

The humble memorial of the under-signed tenants of Bengal.

MOST RESPECTFULLY SHEWETH,—That your memorialists notice with great regret that no provision has been made in the Bengal Tenancy Bill with regard to *bastu* lands or homesteads. The only section which refers to such lands is section 216 which runs as follows: "When a raiyat, holds his homestead otherwise than as part of his holding as a raiyat, the incidents of his tenancy of the homestead shall be regulated by local custom."

2. That your memorialists have always felt it as a great grievance that the law relating to homesteads has never been formulated by the legislature, and that it has been allowed to be shaped entirely by judicial decisions based on judicial discretion.

3. That your memorialists have under the circumstances above set forth never been able to ascertain the law relating to homesteads and it has always appeared to them a pure matter of accident how a particular Judge will decide a particular case involving the law of homesteads.

4. That in consequence of the exclusion of *bastu* lands from the class of lands over which occupancy right could be acquired, men who have been holding *bastu* lands for two or three generations have been arbitrarily ejected upon the mere service of a notice on them by the landlord.

5. That your memorialists have found very often that English Judges when they have to decide cases in regard to *bastu* lands regulate their judicial discretion by their conceptions of English law. They regard all tenants as tenants-at-will unless there is clear documentary proof to the contrary, and in the absence of any specific contract they hold the landlord entitled to eject his oldest tenant upon the mere service of a notice. In Bengal, however, tenancy-at-will and its necessary consequence arbitrary eviction have never been recognised. The rent which the raiyat pays is only a land-tax, and he cannot be ejected so long as he pays his determined rent. This principle was recognised by the authors of the Permanent Settlement. The idea of evicting a raiyat from his holding on any other ground than non-payment of rent was foreign to the authors of the Regulations. In Act X of 1859 also, sections 21, 22 and 78 authorize the cancellation of leases and actual eviction only on non-payment of rent. The English lawyer, however, has always insisted that the landlord has an inherent right of eviction and that the only defence to a suit for ejectment would be a specific agreement.

6. That your memorialists have been greatly alarmed by the judgment of the Calcutta High Court in *Prosunno Kumari Debea* vs. *Sheik Rutton Bepary* reported in the Indian Law Reports, 3 Calcutta Series, page 696. The judgment gives some indication of the previously unsettled state of the law, but it practically settles the law by declaring that for whatever length of time a man may have held *bastu* land he may be turned out any day upon being served with a notice. Your memorialists submit that such a view of the rights of the *bastu* tenant is seriously detrimental to the interests of the entire body of the Bengal peasantry. It is extremely difficult to prove the existence of a custom satisfying the conditions which would make it valid in the eyes of a Court, and practically a man would have no defence if the most capricious attempt were made to turn him out of his ancestral home.

7. That your memorialists in view of the danger of leaving the law relating to *bastu* land unsettled and in view of the ruinous consequences of the ruling of the High Court above referred to, beg leave to submit that the law may be definitely settled by Your Excellency's Council and specially they pray that it may be provided in the Bengal Tenancy Bill that rights of occupancy shall accrue in all *bastu* lands.

And your memorialists, as in duty bound, shall ever pray.

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No. L.9-301, dated 7th January, 1885.

From—His Highness the Maharaja of Burdwan,

To—The Secretary to the Government of India, Legislative Department

As the greater portion of my estate is let out in putni, I cannot but feel deeply interested in any Bill which proposes to amend the Putni Law. I therefore beg to send the accompanying Notes, and request the favour of your laying the same before His Excellency the Governor General of India in Council for favourable consideration.

*A few Notes on the amendment of the Putni Regulation and its proposed incorporation with the Rent Law.*

1. No good, I submit, can be gained by the incorporation of the Putni with the general Rent-law. It seems, on the contrary, desirable that the Putni-law should be kept separate and distinct. All the provisions on the subject should be embodied in a separate Act, thus preventing the confusion and difficulty which is likely otherwise to arise from the incorporation of the one law with the other. To putnidars especially, with their imperfect acquaintance with law, the incorporation cannot fail to be objectionable as throwing in their way difficulties likely to prevent them from distinguishing which provisions will apply to putnis and which not.

2. It is more than sixty years since Regulation VIII of 1819 was passed, and experience has shown how satisfactorily it has worked. It cannot be doubted that it is one of the most successful instances of legislation which the present statute book of the country can boast. In their report on the first Bill, the Rent Commissioners, in speaking of the Putni-law, bore testimony to the fact that the procedure is seldom abused, and "that it is extremely rare to hear even the allegation that a tenure has been brought to sale without arrears being *bonâ fide* due." The general and principal features of the existing law, therefore, ought to be kept unaltered; but certain additions and alterations here and there are necessary, and deserve careful consideration. Some of the amendments I am about to propose may be regarded as part of the existing law on the subject, based as they are on the rules of the Board of Revenue and long established practice. But there are others which are new and necessary, and the effect of which would be to check unnecessary litigation and place things on a more satisfactory basis. It is these especially which I am desirous to bring forward for the consideration of the Legislature.

3. Although the present Rent Bill cannot certainly be characterized as on the whole a happy attempt at legislation, yet its proposed provisions with regard to the registration of transfers of, and succession to, tenures would be undoubted improvements upon the existing law. The importance and the necessity of landlords knowing the names of persons whom they are to consider as their tenants, and whom they should look to for payment of rent, cannot be called in question. As to putnidars, it cannot be denied that they have hitherto as a rule neglected to register their names in the zemindar's *sherista*. The necessity of some provision more adequate and stringent than those already existing for compelling registration of tenures in the zemindar's sherista follows, therefore, as a necessary corollary from the above. That zemindars have often to suffer on account of the disinclination and neglect of the putnidars to register their names, is a fact too obvious to need any illustration. For a putnidar to register his name in the zemindar's sherista is very rare, and unless certain penalties and disabilities are attached to non-registration, this unsatisfactory state of things is likely to remain unaltered. At present a putnidar considers it his interest not to have his name recorded in the zemindar's sherista in the place of the old tenant. If the latter is dead, it is his interest to keep the zemindar ignorant of the fact, that he may, in case of a sale of his taluq under the Regulation, for default in the payment of arrears, be able to put forward as a ground for reversal of the sale that the proceedings had been conducted in the name of a dead person. In the present state of the law a technical objection of this nature, independent of any loss caused to the putnidar in consequence of the irregularity complained of, would be a sufficient ground for setting aside a sale. When, therefore, a putnidar finds that the notification of sale does not run in his name, he need not pay the arrears, for he knows that the sale will be set aside; and he will be able to recover from the zemindar costs of the suit—costs which may exceed those he really incurs. For he may in such a suit engage a single junior pleader paying him less than half fees, while recovering the full amount of pleaders' fees as prescribed by law. Thus the putnidar in such cases takes advantage of his own wrong, and for this reason, amongst others, putnidars are not at all anxious to enlighten zemindars as to the present ownership of their tenures.

4. As regards holdings and tenures other than putnis, it is to a certain extent the interest of the tenant to have his name registered in the zemindar's sherista, because otherwise a suit for arrears of rent may be brought against the registered tenant and a decree obtained against him, and perhaps in some cases, *e.g.* where the tenure is sublet, it may be sold without the tenant coming to know of it. This cannot occur with respect to putni tenures. Putni-sales are periodical, and it is well-known when they take place. The fact that the sale-proceedings take place in the name of the registered tenant cannot affect the putnidar in the least. Why should a putnidar, then, be anxious to seek for registration and pay the prescribed fee when he has nothing to lose and something to gain by pursuing a contrary course? The necessity of additional provisions attaching certain penalties and disabilities to non-registration is, therefore, obvious. I would, therefore, propose that to the provisions on registration already existing in Regulation VIII of 1819, the provisions contained in sections 15 to 22 of the Rent Bill should be added. There should be a further provision embodying the principle of the ruling laid down in *Gossain Mongal Dass* v. *Roy Dhunput Sing* in Vol. 25 W.R., p. 152, that where a putnidar has omitted to register his name in the zemindar's sherista, the zemindar is not bound to recognize him as a tenant, and the latter has, therefore, no right to bring a suit against the former to set aside a putni sale. An exception ought to be made where the zemindar is guilty of fraud in any matter relating to the sale.

5. In setting aside a sale held in execution of a decree of a Civil Court, on the ground of irregularity in publishing or conducting it, it is necessary to prove—(1) that there were material irregularities in that respect, and (2) that substantial loss has been caused to the applicant by reason thereof. The law is different with regard to setting aside a putni-sale. As the case law now stands, a mere irregularity though not material, and without any proof or even allegation of any substantial loss having been caused thereby, would be a sufficient ground for the reversal of a sale. The wording of the Regulation, however, that a sale should be set aside on the putnidar's "establishing a sufficient plea," seems to me to be susceptible of a different construction from that which is now adopted. Why the law for setting aside a putni-sale should be different from that for setting aside an execution-sale, it is difficult to understand. Where a putni-sale has taken place for default in paying the arrears in accordance with the express terms of the lease, it is but fair to the zemindar that substantial loss to the owner of the putni on account of the irregularities complained of should be insisted upon as a condition precedent to the reversal of the sale.

6. Another point which ought to be noticed as needing amendment is the mode of publishing the notifications of putni-sale. The present law requires the publication of three notifications. One in the Collectorate, another at the zemindar's cutchery, and a third at the cutchery, or at the principal town or village in the land of the defaulter. The non-publication of the two first mentioned notices has seldom, if ever, been the ground of a reversal of a putni-sale. It is the publication of the third notice therefore which only need be now considered. The existing law on the subject as administered in the Courts has proved a source of very great hardship to the zemindar. The law requires that the third notice should be published by being stuck up at the cutchery, or at the principal town or village upon the land of the defaulter; that the peon who goes to serve the notice should bring back the receipt of the defaulter, or of the manager of the property, or in the event of inability to procure this, the signature of three substantial persons residing in the neighbourhood, in attestation of the notice having been brought and published on the spot. If it appears from the tenor of the receipt or attestation in question that the notice has been published at any time previous to the 15th of the month (Bysack or Kartick as the case may be), it is a sufficient warrant for the sale to proceed on the day appointed. In case, the villagers object or refuse to sign their names in attestation, the peon must go to the cutchery of the nearest Munsif, or, if there be no Munsif, to the nearest thana, and there make a voluntary oath of the same having been duly published,—a certificate to which effect must be signed and sealed by the said officers and delivered to the peon.

7. That the publication of the notice is the real thing aimed at by the Regulation admits of no question. The object of the receipt, as laid down in the law, is to enable the zemindar to produce before the Collector some evidence which *primâ facie* would be sufficient warrant for the sale to proceed. Where the actual service of notice is satisfactorily established, a technical objection to the receipt, based on the ground of non-compliance with any of the formalities laid down in the law, ought not to be held a sufficient justification for the reversal of the sale. In the recent case between myself and Tarasunderi Debi and others, reported in 9 I. L. R., Cal. Series, p. 619, it has been held that where there is a controversy as to the service of notice, an objection as to the form of the receipt would be a sufficient ground for setting the sale aside. If by this is meant, that where there is not sufficient evidence to justify the Court in holding that notice has been served, the sale ought to be set aside, no one could with propriety complain. But if, on the other hand, what is meant is that whenever the service of notice is called in question, an objection as to the form of the receipt, if established, would be a sufficient ground for a reversal of the sale, then the precedent above cited would operate as a very great hardship on zemindars. The putnidar himself is seldom present in the taluk. The peon who goes to serve the notice in the mofussil may not personally know the manager of the property, and some deception may be practised upon him—a thing unfortunately not rare. The peon who in many cases does not know the gomasta or naib of the property after causing due publication of the notice sometimes obtains the signature of some person purporting to be that of the talukdar's naib or gomasta, and comes away under the *bonâ fide* impression that he has got a document evidencing the fact of the due publication of the notice of sale in the handwriting of the proper individual. But it sometimes happens that the putnidar's men to provide against the contingency of a putni-sale for default to pay the arrears, studiously puts down in the receipt as the putnidar's manager of the property and attesting witnesses the names of dead or fictitious persons; or, if the name of the real manager is given, it is by arrangement between the putnidar's men signed by somebody else. The peon generally a stranger to the place and parties, is unable, for obvious reasons, to detect the deception so practised, and the result is unfortunate for his employer. When such a receipt is produced in a Court to negative the allegation of non-service, the defaulting putnidar comes forward with proof that the attesting witnesses are dead or fictitious persons, or that the naib himself has not signed it, and with the receipt, the zemindar's case falls to the ground. The oath of the peon counts for nothing, and instead of being pronounced, as is very often really the case, the party deceived, he is charged with having palmed off upon his employer a false receipt. That the receipt itself is a very important piece of evidence in determining whether or not a proper service of the notice has been effected is admitted; but a mere technical objection or flaw with regard to it should not be made a ground for the reversal of a sale where actual service of the notice is otherwise sufficiently proved.

8. Such being then the present state of the law, let us now see whether, in lieu of the existing provisions for the service of notice in the mofussil, others could be substituted which, without prejudicing either party, are calculated to bring about more satisfactory results.

9. For this purpose, it would be necessary to see what were the objects of the legislature

in providing for the publication of a notice in the mofussil. The objects are (1) to give notice to the defaulter of the intended sale, (2) to give notice to purchasers, and (3) to give notice to under-tenants to enable them to protect the taluq by depositing the arrears.

10. It is obvious that intimation of the intended sale ought to be given to the above-named persons. This object, however, I beg leave to suggest, may, as a matter of fact, be sufficiently attained by the 1st and 2nd notices provided for by law. More than half a century has elapsed since the time when Regulation VIII of 1819 first came into operation, and under it half-yearly sales are held all over the country at stated intervals. It is, I submit, simply absurd for any man to say now, that he could not pay the rent, because he knew not when the sale was to take place. Besides, if a defaulting putnidar, or subordinate tenure-holder, or an intending purchaser wishes to ascertain whether a particular tenure has been advertized for sale, he has simply to go to the zemindar's cutchery or the Collector's office to assure himself of the fact. The *istahars* (sale notifications) hung up there will furnish either side with unimpeachable testimony of the fact as to whether a particular putni has been advertised for sale.

11. To take up one by one the three above-mentioned objects which were intended to be secured by service of the sale notification in the mofussil, I submit that, in order to give notice of the sale to the defaulters, a notification in the mofussil is not, for reasons already stated, at all necessary. The reasons which render a notice to tenant essential in a rent suit do not apply to the case of sales of putnis under the Regulation. A zemindar is at liberty to bring a rent suit at any time within three years from the last day of the Bengali year in which the rent is due. There is no knowing when such a suit will be brought, and a notice therefore is necessary. But putni-sales are periodical, and it is well-known throughout the length and breadth of the country when they are held. In a recent case, Mr. Justice Maclean observed "the putnidars in the Burdwan raj know very well that there is generally no neglect to bring the putni tenures to sale on the appointed day;" and further on, "that it is as certain as Aughran follows Kartick, that a sale would take place if rent is due, and there are numerous methods for the acquisition by plaintiff of knowledge that the sale would take place besides the affixing of a notice at Salmula, and the owners might be credited with the knowledge that, as they had certainly not paid their rent, they must do so to save the sale." It follows from the above that a notice of putni sale to the defaulter is not necessary.

12. As regards the second object of the notice in the mofussil, *viz.*, to give notice of the intended sale to purchasers, this, also, for reasons already stated, is hardly necessary. On every day fixed for the sale of putni taluqs, a large number of purchasers, putnidars, &c., are collected at the place of sale. That there is no lack in the number of purchasers must be admitted by everybody who knows the real state of things. In the Burdwan district more than 500 men are collected. Putnidars, too, prefer to give up their tenures at these sales, because they generally fetch a higher value there. Publication of a notice on the defaulting taluq has not, I think, the effect of adding to the number of purchasers. Everybody who is able and willing to purchase putni taluqs attends the Collectorate on sale days. There old friends meet, and the landed aristocracy of the district is gathered. Men who have acquired money in service or as merchants or in any other profession, and want to invest it in landed property, look forward to these sales as offering opportunities for the accomplishment of their wishes. In fact, at no other sale are so many purchasers gathered together. A notice, therefore, in the mofussil is not necessary so far as purchasers are concerned.

13. Thirdly, with regard to under-tenants, a reference to either of the first two notices would enable them easily to ascertain whether any particular putni has been advertized for sale. The rents of most of the putni taluqs are paid generally between the date of the application for sale and the date fixed for the sale, and the under-tenants have, if disposed to deposit the arrears, to ascertain from the zemindar's cutchery whether the arrears have been paid. The absence of the third notice will not, therefore, impose on them any additional trouble or place them in any worse position. Besides where a putni-sale has taken place, an under-tenant may bring forward his claim to the price he may have paid for the tenure, or for a just compensation for the loss sustained by him in consequence thereof by a regular suit. Clause 5 of section 17 of Regulation VIII of 1819 contains provisions for paying the under-tenant any sum, to which he has established a right, out of the surplus sale-proceeds. There is, therefore, a sufficient guarantee against the under-tenants suffering pecuniarily on account of the default of the putnidar. The absence of any privity of contract between the zemindar and the under-tenants of the putnidar should relieve the former from the obligation to give notice of the default to the latter. The putnidar being in privity with his under-tenants, and being liable to them for any loss resulting from the sale, the duty of giving the notice of default to the under-tenants ought to rest with him.

14. For the above reasons, I am of opinion that the notice in the mofussil is superfluous. I beg leave to point out that there seems to be no reasonable ground for drawing a distinction between a sale under this Regulation and one for arrears of Government revenue. Every putnidar knows very well when his taluq will be brought to sale if he makes default in the payment of rent, in the same way, as every holder of an estate paying revenue to Government knows when it will be brought to sale for his default in the payment of revenue. It is no more necessary to inform the putnidar of the liability to sale in the one case than in the other. The notifications which are held sufficient in a revenue-sale for the protection of the interests of parties concerned, ought also to be held sufficient in the case of putni-sales. Under Act XI of 1859, when an estate falls into arrears, the Collector is required to issue notices under sections 6 and 7 of the Act. It has been held by the High Court in the case of *Shajedunnessa*

*and the Collector of Burdwan* v. *Juggobundhu Bunnerjee*, that a revenue-sale ought not to be set aside for irregularities in the publication of notices under section 7, as these notices are simply intended as orders to the tenants prohibiting their paying rent to the defaulter. I may, therefore, leave section 7 out of consideration. Under section 6, where the revenue of an estate or share of an estate is below Rs. 500, two notices have to be issued, one to be stuck up in the District Judge's Cutchery, and the other in the Collector's Cutchery. When the revenue exceeds the said amount, a third notice has to be published in the Official Gazette. I would humbly suggest that, instead of the third notice for the sale of a putni tenure being served in the mofussil, it should be published in the Official Gazette, and in one or more of the local newspapers, if the Collector of the District so directs. If the proposed provision be adopted any one may, by purchasing an issue of the Gazette or local newspaper, obtain the desired information with the advantage of obtaining in a collected form the notices of all the tenures advertised for sale. This provision will be an effectual substitute for the provision for service of the notice in the mofussil. If, however, for any reason, which I do not at present appreciate, a notice in the mofussil should be deemed indispensably necessary, I would suggest that the third *istahar*, instead of being, as now, posted at the cutchery of the defaulter, should be posted at the Police thana within the limits of which the defaulting tenure is situate. This method, if adopted, will enable the defaulters, the under-tenure-holders, and the intending purchasers to learn without any appreciable difficulty what tenures within the limits of that thana are advertized for sale. Such an arrangement is calculated to commend itself to all parties, as by it neither side gets any undue advantage over the other. The putnidar will not suffer from the laches of the zemindar's agent, and the zemindar will not be made to suffer for the putnidar's cunning.

15. Section 14 of Regulation VIII of 1819 provides that it shall be competent to any person desirous of contesting the right of the zemindar to make the sale, whether *on the ground of there being no balance due or on any other ground*, to sue the zemindar for a reversal of the sale, and upon establishing a *sufficient plea* to obtain a decree with full costs and damages. It seems from the wording of the above section that it was not the intention of the Legislature that a sale should be set aside on merely technical grounds.

16. In the corresponding section of the present Bill (section 205) the language has been changed. It says—"any person aggrieved by a sale of a tenure effected under cover of the provision of this chapter, but not warranted by those provisions, may institute a suit," &c. Different constructions may be put upon this section if passed into law. The words "any person" are objectionable. The right to set aside a putni-sale ought to be given only to the registered tenant. Any one who is not the putnidar, or one of the putnidars, ought not to be allowed to sue. It is not meant probably by section 205 of the Bill to give any tenant or under-tenant of the putnidar a right to bring a suit for the reversal of a putni-sale, as there is no privity of contract between the putnidar's under-tenant or tenant and the zemindar: the former, if a loser by the sale, has a right of action against the putnidar for any damages sustained by him in consequence thereof. The words "any putnidar" ought therefore to be substituted for "any person" in section 205 of the Bill. The words "any party" in section 14 of the Regulation, considered along with the other words, are, I believe, always taken to mean any of the putnidars,—*i.e.*, any of the parties to the *Ashtum* sale. I am not aware of any instance of a putni-sale having been set aside at the suit of a person other than the putnidar. Reading the whole of section 14 of the Regulation, it seems to me that it was not the intention of the framers of the Regulation that any under-tenant or third party should have a right to set aside a putni-sale. For the above reasons the ambiguity contained in the words "any party" in section 14 of the Regulation ought to be avoided by substituting the words "any putnidar" in their place.

17. Do the words "not warranted by those provisions" in the above section mean that a technical defect as to the form of the receipt would be a ground for setting aside the sale? A technical defect like that ought not to be held to be a ground for setting aside a sale. The section ought to be made clearer.

18. The words "provided no sale shall be set aside unless it is proved that substantial loss has resulted to the plaintiff on account of a non-compliance with the provisions of this chapter" ought to be added after paragraph 1 of section 205 of the Bill.

19. Another matter which ought to be considered is the question of awarding costs when a putni-sale is set aside. This question, I think, ought to be left to the discretion of the Judge to be settled according to the circumstances of every particular case. Where the zemindar has acted fraudulently, the costs of the putnidar and the damages sustained by the purchaser ought to be decreed against him. But where fraud cannot be attributed to the zemindar, and the sale has been brought about by the default of the putnidar in payment of rent, it would not be fair to the zemindar that he should be made liable for the costs of the purchaser and the putnidar in every case. The question of costs ought, I think, to be left to be settled according to the circumstances of every particular case. The discretion of Courts ought not to be fettered in this respect.

20. There is no express provision in the law to the effect that if the 1st of Kartick or the 1st of Bysack, the dates fixed in the Regulation for the presentation of applications of half-yearly putni-sales, be a Sunday or a holiday, the applications may be presented on the day on which the Collectorate opens. The want of an express provision of law on the point is at present supplied by a rule of the Board of Revenue, authorizing the presentation of these applications on the next day which is not a Sunday or holiday. This latter provision of law ought to be embodied in the Act itself. A similar provision is necessary as regards the date of sale. Section 208 of the Rent Bill has been framed for that purpose.

21. Then a further question arises, *viz.*, as to whether when, in consequence of the Collectorate remaining closed on the 1st of Kartick or the 1st of Bysack, applications for sale are presented on the day on which the Collectorate opens, the sales are to be held a month or thirty days thereafter or on the 1st of Aughran and 1st of Bysack respectively. The rules of the Board of Revenue enjoin that the sale shall take place a month after. The want of a definite rule on the point in the law itself leads sometimes to that want of uniformity of practice which it ought to be the object of the law to secure. The established practice, based on the above-mentioned rule of the Board of Revenue, is to hold sales a month after the Collectorate re-opens, and this rule ought to be embodied in the law itself.

22. If the suggestion made above be adopted, considerations of convenience would require a slight modification in another portion of the law. The law lays down that the notices in the mofussil should be served previous to the 15th day of Bysack or 15th day of Kartick, as the case may be. The object of the Legislature is, it has been held in the case of *Huronath Gupta* v. *Juggunnath Roy*, reported in 11 W. R., p. 87, to give fifteen days' notice to the defaulter. Consequently, instead of the words "previous to the 15th day of Bysack," in section 8, clause 2, the words "previous to the 15th day before the date of sale" ought to be substituted. The want of such a provision frequently occasions very great difficulty to the zemindar. It sometimes happens that, owing to the Collectorate remaining closed on account of the Durga Puja holidays, applications for sale have to be presented on the 10th, 11th, and even sometimes the 12th day of Kartick. It then becomes a difficult thing for the zemindar to have the notice with reference to all the taluks served before the 15th, especially as it is not until the Collector fixes the date of sale that notices can be issued.

23. Where a Collector rejects an application for a putni-sale without sufficient cause, and his order is reversed by the superior Revenue Authorities after the date fixed for sale, the usual practice is to sell the tenure on another day fixed by the Collector. This practice ought to be recognized by the law; at any rate where it is found that the Collector has rejected the applications for the sale of a number of putni taluks without sufficient cause, and such a procedure is likely to cause hardship to the zemindar, power ought to be given to the Board of Revenue to fix another day for the *sale* of which due notice should be given in two successive issues of the official Gazette, and in such other manner as the Board thinks fit. Where the zemindar has to pay a very large sum of money as Government revenue, and most of his estates are let out in putni, there can be no doubt that it would occasion very great hardship to him, if the Collector were without sufficient cause to refuse to sell all or a large number of his taluks. The zemindar ought also to be allowed to include in the next half-yearly sale, the amount of any demand which, though made on the occasion of the preceding half-yearly sale, was on insufficient grounds not allowed to be summarily realized.

24. An express provision of law allowing putni-sales to take place if the zemindar dies during the pendency of the application for sale, is also necessary. Where the zemindar dies shortly before the date of sale, and an application is made by his heir for the substitution of his name in the Collector's towji, the petition for sale ought to be entertained. Meanwhile, the Collector should decide before the date fixed for sale, whether the petitioner has the right to have his name substituted in the towji in place of his predecessor in interest, and if he comes to a conclusion in favour of the petitioner, the latter ought to be allowed to proceed with the sale.

25. A zemindar should be allowed also to include dâk cess in his petition for sale under the Regulation in cases in which the putnidars have by express stipulations in the kabuleat bound themselves to pay the same. The amount of dâk cess is always small, but the costs of instituting a suit in Court and executing the decree obtained thereupon often exceeds six times the amount. The putnidar would be a gainer in a pecuniary point of view, if such a provision were inserted in the law, as the greater portion of the costs of the suit fall ultimately upon him; while the zemindar would be saved the trouble of instituting petty suits, as also certain expenses which he has to incur for the purpose, but which he cannot recover from the defaulter, *e.g.*, the cost of sending a man to file a plaint, paying a Muktear, &c. It might even be enacted that where the tenant objects, and the zemindar is not able to produce and file a decree either against the putnidar himself or his predecessor in interest establishing his right to dâk cess, or where the terms of the kabuleat do not establish beyond a doubt the liability of the putnidar to pay it, the amount claimed as dâk cess should be deducted from the *Ashtum* petition.

26. Why zemindars are still made liable to pay dâk cess, it is difficult to understand Section 4 of Act VIII of 1862, B.C., provides that no zemindari dâk shall be established or maintained between any two places between which a Government post for the time being exists. It happens, however, to be the case that almost all the lines which are now maintained out of the zemindari dâk fund, are between places in which there are Government post offices. It is time, therefore, that the dâk cess should be abolished.

27. The Bill does not anywhere define in what mode the jurisdiction of the Collector to entertain an application for the summary sale of a putni taluk is to be determined. The Regulation is also silent on this point, but Act VI of 1853 provides that an application for the sale of a putni taluk is to be presented in the Collectorate within the jurisdiction of which the putni is situate, and if a putni taluk is situate within the jurisdiction of different Collectors, then in that Collectorate within whose jurisdiction the greater portion of it is situate. The last portion of the provision frequently occasions very great difficulty. Considering that even Government

officers, with all the facilities they possess for obtaining information on any point, often feel a difficulty in ascertaining the locality of particular mouzahs, it may be readily imagined how difficult it would necessarily be for the zemindars to determine not only their locality but acreage. I would, therefore, propose that applications for the summary sales of putni should be ordinarily made in the Collectorate on the revenue roll of which the estate within which the putni is situate is borne, provided that where applications for the sale of a particular putni have been made for a certain number of years in a certain Collectorate, it shall be ordinarily made in that Collectorate. To the higher Revenue Authorities may be reserved the power of directing, for any sufficient reason, that any particular tenure should, for the future, be sold at any Collectorate other than that above indicated, and when such a direction is given, it should be published in two successive issues of the Government Gazette.

28. There ought further to be a section similar to section 8 of Act XI of 1859, declaring that no claim to abatement or remission of rent, unless the amount of the same has been settled by a Court of Justice or by the parties in writing, nor any other claim which a putnidar may have against the zemindar, shall bar or render void or voidable a sale under the Putni-law.

The converse of the last mentioned provision might also be enacted, precluding a zemindar from demanding in an application for summary sale any enhanced rent, notwithstanding that he may be legally entitled to such rent, unless the amount of it has been decided by a Court of competent jurisdiction, or admitted by the putnidar by a duly stamped document executed by him in favour of the zemindar.

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No. 126, dated 14th January, 1885.

From—C. A. WILKINS, Esq., Offg. Registrar, High Court, Calcutta,

To—The Secretary to the Government of India, Legislative Department.

In continuation of Mr. Bayley's letter No. 2943, dated 20th November 1884, I am directed to forward, for the information of His Excellency the Governor General in Council, the accompanying copy of a minute by the Honourable Mr. Justice O'Kinealy on the Bengal Tenancy Bill.

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*Minute by the Hon'ble*, J. O'KINEALY.

1. BEFORE discussing the merits of the present Bill, which has been forwarded for the opinion of the Judges of the High Court, I shall give a summary of the relations which, under the Permanent Settlement and subsequent Regulations and under the rulings of the courts, existed between the zemindars and ryots up to and after the passing of Act X of 1859. It is only through such an examination of the law that we can arrive at a due appreciation of the duty imposed on the civil courts of Bengal by Regulation VII of 1799, namely, the duty of determining the rights of every description of landlord and tenant, whether the same be ascertainable by written engagements or defined by the laws or regulations or depend upon general or local immemorial usage.

2. In legislating, according to the customs of this country, one of the chief difficulties to be contended with is the erroneous ideas of the cultivators' rights which follow from paying too much regard to the relative rights of landlords and tenants in England. Forgetting that the system of land tenures in England is peculiar to that country, some seem to imagine that in India also a zemindar must hold of the Crown and that all other rights in the soil must be carved out his tenure. There could, however, be no greater mistake than this.

3. The rights of the people of India in the soil must be determined by the laws and customs of India and not of England, and for the only authoritative declaration of what those laws and customs were, we must refer to the laws themselves. What then was the law and custom in India regarding the right of the Government in the soil? The answer to this question is to be found in Regulation XLIV of 1793 and XLI of 1795, where it is declared that—

"By the ancient law of the country, the ruling power is entitled to a certain proportion of the produce of every beegah of land (demandable in money or kind, according to local custom) unless it transfers its rights thereto for a term or in perpetuity, or limits the public demand upon the whole lands belonging to an individual, leaving him to appropriate the difference between the value of such proportion of the produce and the sum payable to the public whilst he continues to discharge the latter."

4. This is a statement of the law as it existed up to 1793. Under it Government, it will be observed, claimed no *estate* in the land. Its rights were limited to the receipt of a land tax. If then by the ancient law of the country the right of the State was so limited, the question occurs, was the soil the property of the zemindars or of the ryots? The answer to this question as far as concerns the zemindars is found in Regulation II of 1793, in which it is declared that—

"*The property in the soil was never before formally declared to be vested in the landholders.* Nor were they allowed to transfer such rights as they did possess or raise money upon the

credit of their tenures without the previous sanction of Government. With respect to the public demand upon such estate, it was liable to annual or frequent variation at the discretion of Government. The amount of it was fixed upon an estimate formed by the public officers of the aggregate of the rents payable by the ryots and tenants for each beegah of land in cultivation, of which, after deducting the expenses of cultivation, ten-elevenths were usually considered as the right of the public, and the remainder the share of the landholder. Refusal to pay the sum required of him was followed by his removal from the management of his lands, and the public dues were either let in farm or collected by an officer of Government.

5. This passage is conclusive on the point that the soil was not the property of the zemindars. The zemindar had an interest in the soil just as the State had. He had a profit issuing from the land which however he could neither sell nor mortgage. An estate in the soil out of which the ryot's interest was carved he certainly had not. Consequently the ryot's interests are in no way dependent under the common law of India on those of the zemindar.

6. If, then, neither Government nor zemindar had an *estate*, in the English sense of that term, in the land, the only conclusion is that if such an estate existed at all under the customary law of Bengal, it belonged to the third party interested, namely the ryots. They did not hold from or under the zemindar, and what rights they possessed they held by law—the custom of the country. To show what those rights were, I gave three examples referring to Northern, Western, and Eastern Bengal.

7. In 1793 Behar was settled by Mr. A. Seton, who wrote an interesting report, describing the nature of the ryots' holdings in that district. Among other things he said :—

"It is also understood that a ryot has a *sort of prescriptive right* to continue on the ground thus occupied by him while he adheres to the rates expressed in the village pottahs; inasmuch as I do not recollect an instance of a zemindar having attempted to remove a ryot who had not been guilty of a *breach thereof*."

8. At page 529 of the Fifth report, it is stated in regard to Midnapore :—

"The poorest ryots are tenants, and by the custom of the country they are considered as a *sort of proprietors*, entitled to a perpetual lease.

9. Lastly in the Selections from the Bengal Government, No. 11, the tenures of Assam in 1839 are thus described :—

"The ryots are now considered to have *full proprietary* rights in all their lands of all description * * * * I consider all the estates in Assam, of all description and sizes, to be *freehold*, and held subject to the only condition of paying the Government tax on the land; and all occupants are, with little exception, freeholders."

10. I will only give another reference. In 1851, a memorial was addressed to the Legislative Department by Sumbhunath Pundit, subsequently a Judge of the High Court, Unnodaprasad Banerjee, now Government Pleader of the High Court, Hurrish Chunder Mookherji, Secretary to the British Indian Association, and others. It will not be denied that these gentlemen were conversant with the rights of the ryots, nor asserted that they were biassed in their favour. They said :—

"*It has, we believe, not yet been denied that the interest of a khoodkasht ryot is transmissible by sale, gift, and succession, and that his right of occupancy does not terminate by any of those acts or omissions which determine the rights of leaseholders generally. In certain points of view, a khoodkasht tenancy constitutes the highest title* to real property known to the laws of this country."

11. In the opinion expressed in this extract I concur; and the remarks I have already made support it. They go to shew that the rights of the ryot did not flow from the zemindar, nor were they carved out of his estate. On the contrary, the interests of the ryot were antagonistic to those of the zemindar; the rights of both depended, in their nature and extent, on the customary law of the country, but while the right of the zemindar was a share in the profits, the right of the ryot extended to the land.

Such being the relative position of zemindar and ryot under the common law of the country, the question is how far the position was affected by the Statute Law. For the solution of this question I turn to the Regulations as the chief source of information. They limited freedom of contract, and invalidated all custom opposed to them. Let us then see what rights under those Regulations were granted to the zemindars and what limitations were thereby imposed upon them. Section 54 of the Permanent Settlement (Regulation VIII of 1793) is as follows :—

"The imposition upon the ryots, under the denomination of abwab, *mahtote*, and other appellations, from their number and uncertainty, having become intricate to adjust, and a

source of oppression to the ryots, all proprietors of land and dependent talukdars shall revise the same in concert with the ryots, and consolidate the whole with the assul into one specific sum. In large zemindaries or estates the proprietors are to commence this simplification of the rents of their ryots in the pergunnahs where the impositions are most numerous, and to proceed in it gradually till completed, but so that it be effected for the whole of their lands by the end of the Bengal year 1198 in the Bengal districts, and of the Fusli and Willaity year 1198 in the Behar and Orissa districts, these being the periods fixed for the delivery of pottahs, as hereafter specified."

Section 55 enacted that:—

"No actual proprietor shall impose any new abwab or mahtote on the ryots on any pretence whatever."

12. Sections 56 and 57 describe the variations which the form of the pottah may assume, and section 58 enacted that:—

"Every zemindar, independent talookdar, or other actual proprietor of land, and every dependent talookdar, shall prepare the form of a pottah or pottahs conformably to the rules above described, and adapted to the circumstances of his estate or talook; and after obtaining the Collector's approbation of it (which approbation shall be signified by such officer superscribing the form with his name and official appellation) he is to register a copy of the form or forms in the Dewany Adawlat of the zillah, and to deposit a copy in each of the principal cutcheries in his estate or talook. Every ryot shall be entitled to receive corresponding pottahs on application and no pottahs of any other form shall be hereafter held valid."

And section 65 enacted that:—

"No proprietor or dependent talookdar shall contract any engagement with any underfarmer or authorise any act contrary to the meaning or spirit of the regulations."

13. From this it is clear that no zemindar had power to compel his ryots to enter into any contract which had not been approved of by the revenue officers of Government. These officers were invested with the widest powers of control, and were empowered not only to decide whether any given form of lease was contrary to the Regulations, but also whether it was suitable to the particular zemindar's estate. If the lease offended in either respect, it was void. Freedom of contract in the sense that a landlord had the power to impose any restrictions he desired on his ryots without the sanction of the executive officers, or as it is now called "power to let his property as he liked," was entirely unknown. The conception was wholly foreign to the Permanent Settlement Regulations.

14. So much in regard to covenants in leases. Now let us see what rules prevailed, as to their duration and as to the rents secured by them. The former point may be briefly dismissed by the statement that under section 2 of Regulation XLIV of 1793, zemindars were not entitled to issue pottahs, even when sanctioned by the revenue authorities, for a term exceeding ten years. The latter point, that regarding rent, will be made clear by a reference to section 6 of Regulation IV of 1794, which laid down rules for determining the rates of the pottahs granted under the Permanent Settlement Regulation. The section is as follows:—

"The approbation of the Collector required to be obtained to pottahs by section 58 Regulation VIII of 1793, is to be considered to extend to the form only. If a dispute shall arise between the ryots and the persons from whom they may be entitled to demand pottahs, regarding the rates of the pottahs (whether the rent be payable in money or kind), it shall be determined in the Dewany Adawlut of the zillah in which the lands may be situated, according to the rates established in the pergunnah for lands of the same description and quality as those respecting which the dispute may arise."

And in section 7 it is stated that the rules in section 6 not only apply to those pottahs which the tenants were entitled to obtain under the Regulation of 1793, but also to the pottahs which they were entitled to receive after the expiration of the first ten years. It runs as follows:—

"The rules in the preceding section are to be considered applicable not only to the pottahs which the ryots are entitled to demand in the first instance under Regulation VIII of 1793, but also to the renewal of pottahs which may expire or become cancelled under Regulation XLIV of 1793. And to remove all doubts regarding the rates at which the ryots shall be entitled to have such pottahs renewed, it is declared that no proprietor or farmer of land, or any other person, shall require ryots whose pottahs may expire, or become cancelled under the last-mentioned Regulation, to take out new pottahs at higher rates than the established rates of the pergunnah for lands of the same quality and description, but that ryots shall be entitled to have such pottahs renewed at the established rates upon making application for that purpose to the person by whom their pottahs are to be granted, in the same manner as they are entitled to demand pottahs in the first instance by Regulation VIII of 1793."

15. Therefore the relative positions of the zemindar and the ryot were as follows:—The zemindar was bound to respect an existing arrangement, but if he found a resident ryot holding at less than the established rates, he could, under section 60 of the Permanent Settlement Regulation, cancel his pottah and assess him at the pergunnah rates, but could not dispossess him as long as he agreed to hold. Further, the zemindar was restricted from forcing on the ryot any lease unless it had been previously approved of by the Revenue officers of Government, and even then for no longer term than ten years. Furthermore the ryot had power to demand a perpetual renewal at the expiration of each term at the pergunnah rate of rent. In other words, the rate at which the zemindar could demand rent from his ryots, of whatever denomination they might be, was simply the established rate of the pergunnah for lands of the same quality and description, the imposition of any cesses being at the same time strictly prohibited

16. Such was the position given to ryots in Bengal under the Permanent Settlement, a right to hold at the customary rates for ever. What is his position now? The answer to this question is to be found in the forms of kabulyats referred to by Sir Steuart Bayley and Mr. Ilbert in their speeches on the introduction of the Bill, The answer is that the cultivator has no right to occupy the land or is rapidly contracting himself out of his right; that he cannot claim to hold or renew at the customary rates, which no longer exist, but at the amount demanded by the zemindar; that in many cases he pays the taxes imposed by Government on the zemindar, although this is by law expressly declared to be illegal, and in some he is clogged by arbitrary restrictions of the most childish nature.

17. I have seen it urged as a reason against the necessity of the proposed law that the zemindars are merely acting within their rights. No doubt this is to a certain extent true except in the matter of the exaction of taxes or cesses. The action of the courts, and occasionally of the Legislature, since 1793 has had the effect of obscuring, if not of abrogating the ancient rights of the ryots; but it affords no answer to the claim, enforced as it is by lamentable experience, that the law should be changed so as to prevent ignorant cultivators from giving up their rights under pressure and placing themselves wholly in the power of an unjust zemindar.

18. Again it has been urged that the leases referred to in Select Committee were isolated examples, and that the exaction of oppressive engagements has not yet grown into a general custom. Granting this, it would to my mind form no sufficient answer, for what may be done by one bad landlord may be done by another. As a matter of fact, however, the assertion is not true. Some time ago I made a collection of leases in force in different districts, and as a rule they contain oppressive restrictions. I give some examples from districts representative of all degrees of advancement or backwardness in Bengal. The following is from Burdwan:—

"Should you fail to pay according to the specified instalments, you shall be liable to pay interest at the rate of half anna per rupee per month (37½ per cent.). No objections as to too much drought or rain will be entertained, nor the objection that the land was left fallow or that you have incurred loss therefrom will be considered. If you fail to pay rent according to the specified instalments, the said land shall be let to other tenants. *Further, in future if there be any new cesses, you shall be liable to pay the same.*"

The next is from Jessore:—

"You will make no objection on account of dearth or inundation; you will keep up the boundaries, and *yourselves prepare dams and embankments.* On default the arrears will be recovered with interest at ¼ anna per rupee a month and costs of suit. You shall pay in addition to the fixed jumma the present *road and public works cess* and *whatever cess may hereafter be levied.*"

The following is from Bogra:—

"If you default in payment you shall pay interest on the amount of the arrear at the *rate of ¼ anna* per rupee per month from default till the date of realization. If you default twice in succession *we shall of our own authority eject you* and recover the arrears of rent and hajut with interest as above and costs, * * * *and neither you nor your heirs shall object, or prefer any claim to possession* of the jote. * * * . You shall not cut down or sell trees of any sort without written authority. If you do so or allow others *you shall pay without objection ten times the value of each tree, and if you object* the amount shall be recovered with costs. * * * *You shall pay in addition to your rent all cesses that may be imposed by Government.* Neither you nor your heirs shall, during the period the jote remains in your possession, claim abatement of the gross rental or the rate assessed. *On the determination of the term* you shall *withdraw from the jote* * * *. If *any new tenant, intending to settle in the village of Amjhoopee wishes to take certain plots occupied by you, you*

*shall give up the same without objection.* If you do not, any loss ensued to us we shall recover the amount by suit with interest and as above and you shall not object."

I shall finish by giving the conditions exacted in Mymensingh :—

"I shall take a new settlement at the end of this term; if not, I shall have no concern with the land. *Whatever rent shall be settled* after survey and assessment I shall agree to pay. If I fail to pay any instalment, I shall pay interest at the rate of 1 anna per month to date of realization. I shall not cut down any tree or allow any other person to do so. *I shall pay separately and without excuse whatever road cess, public works cess, and any other taxes or expenses which I shall be asked to pay by Government or yourself.* If I lease the house and land and remove to any other place, or if I farm, mortgage, sell, make a gift, or alienate it in any way or any portion of it, you shall be competent by order to take possession, and having dispossessed (the new-comer), settle the land with others. *After such settlement my heirs shall have no right or concern with the house or land.* Any claim or objection advanced by my heirs to a right of occupancy shall not be accepted."

19. I continue my examination of the Regulation law. The first Regulation passed in this century which exercised an important effect on the regulation of landlord and tenant was Regulation V of 1812. Section 3 of that Regulation repealed such portions of Regulation VIII of 1793 as required that the proprietors of land should prepare forms of pottahs, and that such forms should be revised by the Collectors, and that engagements for rent contracted in any other mode than that prescribed by the Regulations in question should be deemed invalid. It also empowered zemindars to grant leases to talookdars, under-farmers, and ryots in such form as the contracting parties might deem most convenient and most conducive to their respective interests; provided, however, that they (the zemindars) shall have no power to impose arbitrary or indefinite cesses, whether under the denomination of abwab, muthote, or any other denomination. The meaning of this section was apparently doubtful, but any doubt which might have arisen was cleared away by section 2 of Regulation XVIII of 1812. This Regulation introduced a new ground of enhancement of the ryot's rent. Section 6 of Regulation V of 1812 declared that where the established rates existed, those only could be obtained by the zemindar; but section 7 laid down a different principle for cases where no pergunnah rates existed, and ran as follows :—

"In cases in which no established rates of the pergunnah or local division of the country may be known, pottahs shall be granted, and the collections made according to the rate payable for land of a similar description in the places adjacent; but if the leases and pottahs of the tenants of an estate generally, which may consist of an entire village or other local division, be liable to be cancelled under the rules above noticed, new pottahs shall be granted and the collections made at rates not exceeding the highest rate paid for the same land in any one year within the period of the three last years antecedent to the period at which the leases may be cancelled."

Section 10 referred to notices to enhance the rents of the cultivators and enacted as follows :—

"Unless such notification be duly served, no greater rent shall be exigible by process of distress or confinement of person, nor recoverable by suit in court, than the cultivator or tenant was bound to pay under his previous engagements; and if more be levied from him, he shall be entitled to a refund of the excess with damages, on proof of the circumstances before a court of justice."

20. The effect of this Regulation on the scheme of the Permanent Settlement is given in construction No. 234 of the Sudder Dewany Adawlut issued in answer to a letter from the Judge of Rungpore in 1816. The letter ran as follows :—

*Paragraph* 4.—"The number of summary suits instituted annually since the year 1810 is exhibited in the margin. The increase is to be attributed to the operation of Regulation V of 1812, which seems to have been understood by the farmers and zemindars as authorizing them to consider the ryots, on the expiration of their leases, as tenants-at-will, and has consequently led them to demand enhanced rents in most parts of the district. The provisions of section 15 have also induced many who had demands against their tenants on old engagements to substitute summary prosecutions for the former mode of distraint.

*Paragraph* 5.—"By far the greater number of summary suits preferred last year were for arrears of rent due on kabuliuts, but many of those that have lately been instituted are consequent to the more general operation of section 10, Regulation V of 1812, and are preferred either by the ryots after releasing their property from distraint, or by the farmers or zemindars to recover increased rents on the grounds of having served their tenants with the notice described in the above section and Regulation, the general principles of which, although it is professedly enacted for the guidance of persons purchasing lands sold for arrears of revenue, appear to be applicable to all cases where no written engagements exist, as the respective rights of the proprietors and the ryots, considered independently of their mutual agreements, cannot be supposed to be altered by the mere circumstance of the sale of the estate.

*Paragraph* 6—"On first view of section 10, Regulation V of 1812, it might be inferred that the zemindars or their representatives possess the power of exacting, in the first instance, by distraint or by a summary process, whatever amount they may have thought proper to insert in the notification required to be conveyed to their tenant, the latter having only the option of resigning his land, or continuing to hold it subject to paying the enhanced rent, until he can prove the injustice of the demand by a regular suit. Such an interpretation, however, does not seem to be easily reconcilable with that part of section 7, Regulation IV of 1794, which, being declaratory of the rates at which the ryots were entitled to demand pottahs, and, of course, to continue in possession of their lands, cannot be considered as abrogated by section 3, Regulation V of 1812, and I have hitherto deemed it necessary to require zemindars and farmers, prosecuting summarily for enhanced rent, or defending suits instituted against them under section 15, Regulation V of 1812, to show that the amount demanded in the notification served on their tenants was conformable to the pergunnah rates and the actual extent of land.

*Paragraph* 7.—"Should this construction of the Regulation be correct (and I beg the favour of your informing, should the Court consider it otherwise), it is evident that in the generality of suits denominated summary, it will not be necessary to adduce evidence to prove the pergunnah rates, the quality of the cultivator's land, and frequently the quantity thereof, all of these points being usually disputed, and even the last very frequently remaining doubtful until actually measured, in consequence of the fraudulent reduction made by the zemindars before the decennial settlement in the nominal extent of every farm or jote on their estates for the purpose of imposing upon Government and obtaining their lands in perpetuity on favourable terms."

The answer of the Court was as follows:—

"The Court entirely concur in the construction of section 10, Regulation V of 1812, stated in the 6th paragraph of Mr. Scott's letter dated the 28th July 1815, and resolve that he be informed accordingly. The Court observe that the written notice required by section 9 of that Regulation, when no written engagement may have been entered into, expressly refers to tenants subject to an enhancement of rent under subsisting Regulations, including, of course, the unrepealed provisions in section 7, Regulation IV of 1794, relative to the renewal of pottahs at the established rates of the pergunnah."

21. Thus it is clear that after Regulation V of 1812 was passed, every ryot was entitled to demand from his landlord a pottah at the established rates of the pergunnah, if they existed, and to obtain a renewal of it on the expiration of the term. But where there were no pergunnah rates, the ryot was liable to pay the same rate as was paid for lands of a similar description in the places adjacent. I think there was no point on which the members of the Rent Commission came so nearly to the same opinion as on the right to hold at the customary rates. I held the opinion strongly. Mr. Field and Mr. Mackenzie agreed in asserting—

(1) That the authors of Act X of 1859 did not intend to effect any radical change in the rights and status of the cultivating classes.

(2) That according to law, up to 1859, the only class of ryots recognised as entitled to hold at specially privileged rates were those ryots whose rates were fixed for ever.

(3) That on a correct interpretation of the Regulations and Acts before Act X of 1859 no landlord was *legally* entitled to raise the rents of any village ryots above the pergunnah or customary *nirikh* or rate.

Baboo Peary Mohun Mukerji said:—

"On no one point are the early Regulations more explicit than on this, that with the exception of certain privileged ryots the general body of ryots were liable to pay rent at the established rate, which was understood to mean fully as much as they could afford to pay."

I adhere to the opinion, an opinion in which we all concurred, that a zemindar could not *legally* demand more than the pergunnah money rates. But the law was not powerful enough to defend the ryots, while the zemindars succeeded in breaking the rates and in obtaining from their ryots what they had no legal right to demand.

22. In regard to talukdars the rule was somewhat different, and they were liable to assessment under section 51 of Regulation VIII of 1793, which had no application to ryots.—(See *Ram Chunder Dutt* vs. *Jugesh Chunder*, 12 B. L. R., p. 229). This section was soon found defective. In the case of *Bunchanund* vs. *Hurgopal Bhadoory*, 1 Sel. Rep., p. 192, decided in the year, a talookdar was sued for arrears of rent at an enhanced rate. There was no doubt that his tenure was liable to enhancement, but the difficulty was to determine the proper rate. The decision was as follows:—

"The court entertained no doubt of the lands being held by the respondent at a variable rent, or of their being that description of tenures on which the zemindar is entitled to

demand an increase of rent in proportion to the ascertained assets; and as there did not appear to be in the pergunnah any settled rates of rent for similar tenures, according to which the proper rent could be adjusted, it was determined that the rent demandable from the respondents should be settled by an actual survey and assessment, to be made at the expense of the appellant, unless the parties should come to an adjustment between themselves. In the event of no adjustment being made by them, it was directed that the Zilla Judge should cause a measurement of the lands, and estimate their produce, and after deducting 10 per cent. as the customary rate of the talukdars, together with the actual charges of collection, should fix the residue as the annual rent by the appellant for future years, as well as the rate at which the arrears of the period specified in the claim of the appellant should be adjusted."

23. The reason of this decision is best given in a note by the Judges, in which they say: "There being no rule expressly applicable to the adjustment of rent in this case, the decision was passed upon an equitable consideration of the right of the zemindar to receive a variable rent, proportionate to the produce of the lands which formed a constituent part of his zemindari, and of the right of the talookdars, as holders of hereditary though subordinate tenure, to participate in the RENT produce of the lands comprising it."

This is the first case I can find decided on equitable prihciples, and it formed the basis of section 8, Regulation V of 1812, which gave a new legal ground for enhancing talukdars. This ran as follows:—

"In case of a dependent talookdar, if the rents of the lands be compared according to the rates payable by ryots or cultivators for land of a similar quality and description, a deduction shall be allowed from the *gross rents* in the adjustment of the jumma of such dependent *talook* at the rate of ten per cent. of the talookdar's profits, or income, over and above reasonable allowance for charges of collection according to the extent of the talook."

Neither the decision nor the Regulation referred to the value of produce of the land in the ordinary sense. They only referred to what the Judges call the "rent produce." It will futhermore be observed that neither the Regulation nor the decision based on it has any bearing on the law of enhancement applicable to ryots. That law provided that ryots' rents should be limited by the perganah or customary rates, while talukdars were liable to pay the full mofussil collections less the customary deductions. It is essential that this distinction should not be lost sight of. To confuse rules of enhancement relating only to talukdari tenures with rules which are applicable to ryoti rents is to do the ryots' interests a grave injury.

24. The next law affecting the Permanent Settlement Regulation was Regulation VIII of 1819, and the effect of this Regulation was considered in Construction 1205 of the Constructions of the Sudder Dewany Adawlut of the North-Western Provinces, which was confirmed by the Calcutta High Court on the 12th of April 1889. In that Construction the Sudder Dewany Adawlut of the North-Western Provinces held as follows:—

"They (that is the Court) remark that under the provisions of clauses 4 and 5, section 18, Regulation VIII of 1819, the landholder must first establish by a suit, either summary or regular, the existence of an arrear before he is at liberty to cancel the lease of an under-tenant; while as regards khoodkhast ryots, they have also the power of immediately paying into court any sum adjudged to be due from them before they can be ejected."

The importance of this decision on the *status* of the non-occupancy ryot before Act X of 1859 will be at once perceived. Its importance lies in the fact that such a ryot could only be ejected for non-payment of rent. As far as I understand, the Bengal Government, in its recent report on the Tenancy Bill, is therefore well within the mark, as far as the law before 1859 stood, when they claim that restrictions shall be put on a landlord's power of capriciously ejecting a non-occupancy ryot. And this view of the law is enforced by abundant evidence of a later date. In the first place it is confirmed by a case decided in 1845 in which the nature of the tenure of a ryot in Bengal was discussed before three Judges of the Supreme Court, namely, Peel, C.J., Grant, and Seton, JJ. Their decision was as follows:—

"On the first ground the plaintiff must be non-suited. The ryot here has a better tenure than a lessee in England, and one not nearly so precarious as that of a tenant-at-will."

25. This decision was followed by a decision of a Full Bench of the Sudder Dewany Adawlut in 1855. In that case the question was, what was the nature of a ryot's tenure in Bengal? The Judges say:—

"The plaintiff has not shown that his vendor, whose rights only he bought, was a holder of one of the tenures excepted in the five clauses of section 26, Act I of 1845, nor does he prove in what particular class of ryots he is included. We therefore consider the plaintiff's claim to possession, without permission of the zemindar, invalid. He bought, as he thought, something: the principle *caveat emptor* strictly applies, and it was for him to look to the

certainty of getting a consideration for his purchase-money. The party whom he succeeded had no equivalent to offer: he had merely a right of occupancy so long as he paid his rents; failing to do so, either from inability or from unwillingness, the possession returned to the proprietor, the contract between him and his ryot being no longer in force. Such is the custom of the country, and none but the tenures referred to in Act I of 1845, or in case where a *bonus* has been given, thereby creating in the ryot a right in the property to that extent, are considered tenures transferable by the ryot."

What the court here decided was that, according to the Regulations and custom of the country, an ordinary ryot had a right of occupancy so long as he paid his rent, although he was not within any of the privileged classes of ryots described in section 26, Act I of 1845.

26. It seems, therefore, according to the Regulations and according to the decisions both of the Supreme Court and the Sudder Dewany Adawlut, that up to 1859 ryots had a right to retain possession of their land so long as they paid the customary rate of rent and were not liable to ejectment on a notice to quit. This view of the matter is strengthened by the forms of ejectment prescribed by the Regulations. In May 1828 the Calcutta Sudder Dewany Adawlut, in Construction 482 of the Sudder Constructions, laid down as follows:—

"The Court are of opinion that all differences between landholders and their tenants or ryots involving the question whether the landholder can legally oust the tenant or ryots from the lands which the latter considers himself entitled to occupy should come under the provisions of Regulation XLIX of 1793 or Regulation VIII of 1819."

And in 1839 the same court, as I have pointed out above, held that before a landholder was entitled under the Regulation VIII of 1819 to oust his ryot, he was bound to prove the existence of arrears of rent. Regulation XLIX of 1793 only referred to possessory actions. It was subsequently repealed by Act IV of 1840, and is now embodied in the provisions of the Criminal Procedure Code, and the possessory action given in the Specific Relief Act.

This would appear exhaustive. If all actions for ejectment were to fall under one or other of two Regulations, and neither of these Regulations give any colour to the idea that an ordinary ryot could be ejected on notice, while he paid rent, the only conclusion is that no such action would lie; and as a matter of fact, although two editions of Mr. Marshman's digests of the civil law in Bengal were authoritatively recognised as text-books in the Lower Provinces up to the year 1859, no trace of any such action can be found in them.

27. In 1850 the question of enacting or re-enacting in one law the old Regulations in regard to ejectment was pressed upon the Supreme Government. What then were the Regulations under which it was declared that a tenant could be ejected? They are set forth in the preamble to the Bill, which runs as follows:—

"Whereas by clauses 6 and 7, section XV, Regulation VII of 1799, clauses 2 and 4, section XVIII, Regulation VIII of 1819, of the Bengal Code, and section 26, Act I of 1845, rights are given in certain cases to attach under-tenures, to cancel leases, and to eject under-tenants or occupiers of lands whose titles have ceased, but no means are provided by which persons claiming to exercise those rights can obtain the assistance of the Civil Courts for that purpose, except upon a decree obtained in a regular suit; and whereas in like manner no means, except a regular suit, are now provided by law for giving the assistance of the Civil Courts to persons claiming to eject tenants after the determination of their tenancies, or to eject agents after the determination of their agencies; and whereas the enforcement of such rights without the assistance of the Civil Courts is likely to cause affrays and breaches of the peace, and it is expedient to provide a more summary mode for the trial of such rights, it is enacted as follows," &c.

28. Thus so far back then as 1850, admittedly the only rights which zemindars, even if auction-purchasers, had to eject under-tenants or occupiers of land were those given by clauses 6 and 7, section XV, Regulation VII of 1799, clauses 2 and 4, section 18, Regulation VIII of 1819, and section 26 of Act I of 1845. Under Regulation VIII of 1819, as I have already pointed out, the zemindar could not eject any tenant unless there were arrears of rent due. Section 26 of Act I of 1845 referred to the rights not of an ordinary zemindar but of an auction-purchaser, which were of a special nature in order to protect Government. Clauses 6 and 7, section 15, Regulation VII of 1799, referred to cases in which a zemindar instituted summary suits for arrears of rent, or where the tenant defaulted in payment.

29. This Bill was circulated and printed in the *Calcutta Gazette* of 1852, and though it was ultimately abandoned, it shows most distinctly that at that time an ordinary proprietor of land in Bengal could only

determine the tenancy of an under-tenant or cultivator when arrears were due.

When the Bill which afterwards became Act X of 1859 was drafted, the substantive part of the law of ejectment was inserted in clause 5, section 17, and section 19 of the draft Bill. Clause 5 ran as follows :—

"All suits to reject any ryot or cultivator, or to cancel any lease on account of the non-payment of arrears of rent, or on account of a breach of the condition of any contract by which a ryot or cultivator may be liable to ejectment, or a lease may be liable to be cancelled."

Section 19 said—

"If any zamindar or other person in receipt of the rent of land requires assistance to eject any cultivator not having a right of occupancy, or to eject any farmer or other tenant holding only for a limited period after the determination of his lease or tenancy, or any agent after the determination of his agency, or to enforce any attachment or ejectment expressly authorised by any Regulation or Act, he shall make application to the Collector, and the Collector shall proceed thereupon to enquire into the case and pass orders in the manner provided for suits under this Act. Provided that no such application for the ejectment of a farmer on the determination of a lease shall be received if the lease be of the kind denominated ticca zur-i-peshgee or the like, in which an advance has been made by the lease-holder, and the proprietor's right of re-entry at the end of the term is contingent on the repayment of such advance either in money or by the usufruct of the land. In all such cases the parties must proceed by suit in the Civil Court."

30. These sections formed part of Act X of 1859. They give no new powers to eject, and left the landlord in the position he held under the Regulations. But the effect of these sections reproducing the substance of the Regulation Law was perverted by an oversight in the drafting of Act X of 1859, namely the failure to distinguish between ordinary zemindars who could only eject for arrears of rent, and those who purchased at auction sales for arrears of revenue who had wider powers of ejectment. The preamble of the Bill in 1850 had carefully set forth the different regulations empowering zemindars to eject, and carefully distinguished between the smaller powers of an ordinary zemindar and the larger powers of an auction-purchaser. The draftsmen of Act X of 1859 struck out the mention of the Regulations and left the rest of the section as it stood in 1850. On the passing of the Act, the Regulations were repealed and soon forgotten. The amalgamation of the Supreme Court and the Sudder Dewany Adawlut assisted the tendency to bring in the theories of English law. During this decay of local knowledge and spread of notions based on English property law, this section still remained; a section evidently recognising the ejectment of a ryot by some class of zemindars, but not stating the class. What wonder is it that lawyers of the Supreme Court, not conversant with the history of Bengal, should follow the analogy of English law and declare that not merely an auction-purchaser, but every zemindar could eject when in any case he desired to get rid of his tenant.

31. When the Bill of 1850 was circulated, Mr. C. Steer, the then Judge of Hooghly, but afterwards a Judge of the High Court, proposed that a ryot should be allowed to relinquish his holding by notice—a power which up to that time had never been afforded to tenants. In his letter dated the 26th November 1851 he said—

"*Para.* 7.—There is no disputing that the ryots are horridly oppressed; to what degree is only known in its full extent to their tyrants. At present ryots are quite at the mercy of their zemindars. There is no legal means open to them of getting quit of any bad lands they may have acquired. The remedy the Court propose is not enough. It will be no benefit to the ryot to register his resignation if it is left in doubt what effect such registration has, nor will a clear opinion alone on this point be of any service to him, unless other measures are also taken to secure to him the advantages which registration is designed to afford. Nothing less than shutting up the door to endless and vexatious lawsuits under that frequently availed source, the summary regulation, and allowing the ryot to depart from his relinquished lands and tenements with his property safe in his possession, can be regarded an adequate measure for the relief of a ryot suffering under the evils of a taxation he can neither bear or escape from.

"*Para.* 8.—I repeat that nothing but placing the ryot completely out of reach of the zemindar's touch, and declaring him liable only to a regular suit for any claim posterior to the registration of his resignation will render him safe from the prosecutions of his zemindar. If he is not allowed the protection of the police to remove his property, and if summary actions and attachments are not barred, his resignation tendered to the Court will profit him

nothing. His property will be seized, be the act sheer plunder, or under colour of attachment, and the ryot will find it impossible to get it back. If he should complain to the Magistrate, the zemindar will plead an attachment. If he should appear before the Collector and seek the release of his property from an unjust attachment, the zemindar will reply that there has been no attachment at all. So, that if left, without aid to remove his property, he will leave his old habitation a beggar without a pice to support himself or his starving family, and without a bullock or plough or any other means to cultivate any new farm. Thus he is in a state of thraldom to his zemindar, worse than slavery. The only remedy for these things is to declare summary suits and attachments on account of any tenure barred after the resignation of it is filed. No mischief or injury can accrue to the zemindar by the prohibition of summary suit or attachment, as a regular suit is just as effectual to enable him to recover his dues as the honest application of the summary laws and attachment can be; but the evil lies in these enactments being always abused on every occasion when it serves the purpose of the zemindar. They give him a handle to seize a poor fellow's property, and its recovery is about as probable as if it had fallen into the hands of dacoits.

"*Para. 9.*—There is no occasion I feel satisfied when so much oppression is practised as when a ryot is known to be meditating the relinquishment of his jote. As the law now stands, he has two alternatives, to remain and bear as best he can a grinding taxation, or to fly a beggar and a vagabond. Such a state of things ought not to be tolerated by a just and benevolent Government; and is it going beyond the point to a attribute to it a great deal of one species of crime which prevails all over these provinces, without which the overtaxed poor would find it impossible to feed themselves and to feed their rapacious landlords. To enable him to do both dishonest measurement will be resorted to, and the power which enables a zemindar to exercise such a tyranny over his tenants, is therefore a fruitful source of much of the crime which now exists."

32. On account of this and other representations a section was introduced into the Bill which subsequently became Act X of 1859. That section ran as follows:—

"Any ryot or cultivator who desires to relinquish the lands held or cultivated by him shall be at liberty to do so, provided he gives notice of his intention in writing to the persons entitled to the rent of the lands in or before the month of Jeyt of the Bengal year in which, or of the Fusly year preceding which, the relinquishment is to have effect. If he fail to give such notice, and the lands are not let to any other person, he shall continue liable for the rent of the lands. If the person entitled to the rent of the land refuse to receive any such notice, and to sign a receipt for the same, it shall be served upon him by the Collector, on application for such service being made by the ryot or cultivator within the time above mentioned."

No section giving the zemindar a corresponding power to terminate a tenancy by notice was entered in the Bill or ever made law, and this strongly corroborates the position I have explained in the preceding remarks, namely that, except on a few doubtless important points, Act X of 1859 did not really change the old regulations.

33. The British Indian Association in their comments on the Bill noticed the section just quoted and entered a strong protest against it. In section 21 of their letter to the Government of India, dated the 14th February 1859, they wrote as follows:—

"When the ryot is readily invested with the rights of relinquishing his land, equity demands that the zemindar should have the privilege of ejecting his ryot, whether with or without engagement, when reason for so doing exists. Your petitioners are, however, aware of the consequences which this state of things would lead to, and they therefore recommend that no right fraught with such mischief should be conceded to one party to the prejudice of the other."

To this extract I invite special attention. It is a distinct admission by the exponent of the zemindari interest that so late as February 1859 the right to eject ryots at will was not a right claimed by zemindars at large.

34. So far therefore it appears clear that neither the framers of the Act nor the people most interested in Act X of 1859 ever contemplated that the zemindar had any right to put an end to the tenancy by notice. The British Indian Association representing the zemindars of Bengal asked that the privilege of ejectment at will might be conferred as an equivalent for the ryot's right of relinquishment, and this request was refused. It was during a later period when the preamble of Act X of 1859 had been swept away by the repealing Act, when the history of the old Regulations was forgotten, and cases were decided by officers imbued with the spirit of English law, that by degrees the theory was established that under Act X of 1859 and Act VIII (B.C.) of 1869 the zemindar could treat a tenant in Bengal as a landlord could treat a yearly tenant in England, and was

entitled to dispossess him not on a half-yearly notice, but on what was called a reasonable notice to quit.

In a previous note I said in reference to this question that—

"Whoever enquires into this last attempt of the zemindars to extend their powers of ejectment will be astonished to find how modern it is. The first recognition I can find is that given at page 548 of XXII Weekly Reporter in a case in which the judgment was delivered in 1874 by Phear and Morris, JJ."

35. I have heard it urged that whatever the position may have been under the Regulations, still as the Judges have decided under Act X of 1859 and Act VIII (B.C.) of 1869 that a ryot can be ejected with notice, it is impossible for the Legislature to return to the old state of things. This seems to me a monstrous proposition to maintain. Surely the fact that for a few years past a certain number of decisions have set up an erroneous principle seems not of such importance as to bar a return to the law of the land as declared by the Legislature and the courts for a period of upwards of sixty years. We have not to deal with the interpretation of a statute which has lasted for a century or for a long period, and there ought to be little difficulty felt by the Legislature in restoring things to the position which, under a correct construction of the law, they occupied up to 1874.

A point somewhat similar to this was brought before the House of Lords in the case of the trustees of the Clyde Navigation against Laird and Sons, in which Lord Watson in delivering his judgment said—

"I have only to add that in my opinion such usage as has in this case been termed *contemporanea expositio* is of no value whatever in construing a British statute of the year 1858. When there are ambiguous expressions in an Act passed one or two centuries ago, it may be legitimate to refer to the construction put upon these expressions throughout a long course of years by the unanimous consent of all parties interested, as evidencing what must presumably have been the intention of the Legislature at that remote period. But I feel bound to construe a recent statute according to its own terms, when these are brought into controversy, and not according to the views which interested parties may have hitherto taken and in determining the true import of such a statute it appears to me to be quite immaterial to consider whether it was passed in the year 1858 or in 1888."

36. If then, as has been declared in the House of Lords, a wrong interpretation of a statute for twenty or thirty years would have very little effect on them in deciding as to the purport of the statute, surely there can be no reason why this incorrect interpretation of Act X of 1859 should not now be set right by the Legislature and the rights of under-tenants and occupiers be correctly and carefully defined. From the time of the Permanent Settlement Government has constantly asserted a determination to legislate for the people of the country according to their ancient rights and customs. Is it to be debarred from redeeming its often-repeated pledges because of decisions manifestly wrong, which have sapped all the long-established rights of the tenants?

This then appears to me to be the policy which should be followed in any Tenancy Act, and so far as the provisions of the present Bill are in accordance with that policy I approve of them. So far as they depart from it by injuriously affecting the position of under-tenants and of the cultivating ryots I dissent from them. The aim and object of the Government should be not to create new relations between landlord and tenant, but to respect and clearly define the old, for the old are not only the best, but are what the people are morally and equitably entitled to possess. It seems to me that the recommendations of Mr. Rivers Thompson in his report of the 15th September last tend towards that end, and I consider them fair and just to both parties.

37. I pass on now to notice a few of the more salient portions of the present Bill. I see that some doubts have been raised as to whether the Secretary of State for India in Council will be bound by the Bill. I trust that if there is any doubt on this point it may be removed. At the same time I must say that I do not hold the opinion that, unless the Secretary of State is expressly named in the Act, he will not be bound by it. This view seems to me to rest altogether upon a misconception of the position of the Secretary of State in this country. He is exactly in the position of the old East India Company, and from the very beginning the Company was bound by the Regulations and Act X of 1859, though you may search in vain to find its name in them.

38. There is some danger in the attempt to define the different kinds of tenures. The circumstances of the country are so varied that it is very difficult to obtain a perfect definition; and if the definition turns out to be imperfect, serious inconveniences must of necessity ensue. This is not a new difficulty, nor can I see any reason why the present framers of the Bill could be blamed for not doing what we never have been able to do since the time of the Permanent Settlement. None of the old Regulations undertook to define the different kinds of tenures, or to distinguish them from one another, nor did Act X of 1859, nor Act VIII (B.C.) of 1869. I am strongly of opinion that after all it might be a much wiser course to leave this matter to the courts. It has been left to them since 1793 to decide what is and what is not a ryotti tenure. I think it would be as well if the power is allowed to remain with them.

39. I observe that it has been objected to section 26, sub-section 2, that a presumption in favour of an occupancy right is contrary to the spirit of the Indian law and unjust. I confess I can see nothing wrong or extraordinary in this presumption if viewed with reference to the law of property in India, but if the English standpoint is taken, namely, that a ryot has nothing but what he gets from his landlord, the conclusion would of course be different. We are not however warranted in applying English theories to the construction or interpretation of an Indian Tenancy Act. In Bengal, the tenantry have always had rights in the soil not *under*, but *adverse* to, the zemindar. The right of the Bengal ryot to his holding, while he pays a fair rent, is a right *anterior to*, not a right carved out of, that of the zemindar. This fact is, by the common law of this country, indisputable. Why, then, should it be presumed that these rights, which we know to exist, do not exist, and that the tenant holds only from year to year. It is fair to presume that they do exist until the contrary is proved. The contention adverse to this presumption becomes more unreasonable when we are told that the persons holding under a statutory title form the majority of tenants. Presumptions of a somewhat similar nature are recognised by the Regulations. By section 60 of Regulation VIII of 1793, no landlord in Bengal could demand a higher rate of rent from a resident ryot unless he proved that the ryot had held for three years under the pergunnah rates. Under section 51, Regulation VII of 1793, no zemindar could enhance the rents of a talook unless he proved that it was liable to such enhancement by the custom of the country. If this is the spirit in which the founders of the Permanent Settlement legislated, I do not think there is any objection to extending the protection of a reasonable presumption to ryots who, as a class, are much less able to protect themselves than talookdars. Surely it is not intended that when no such tenancy exists the presumption should be that all ryots hold from year to year. In the North-West it has been decided that there is no presumption that a particular tenant's holding is not transferable without the zemindar's consent (Meer Hedayat Ali *vs.* Baboo Lall Singh, 1869, page 37), and this is a much stronger presumption than that now proposed.

40. In regard to occupancy tenures I think the proposal to render them transferable in Bengal is unobjectionable. Under the law before Act X of 1859 the tenure of khudkast or kadimi ryots could be transferred without the consent of the zemindar. In addition to these there were many other holdings transferable by custom. I may note as examples the jotes of Rajshahye and the guzashta tenure of Shahabad. When Act X of 1859 became law, the highest tenure known to the law was a right of occupancy, and in course of time this became the general description covering all these more ancient tenures. It is, I think, a mistake to suppose that the custom of selling occupancy tenures has arisen since Act X of 1859. I believe that many of the tenures now sold as occupancy holdings are old tenures transferable before that Act ever came into existence. No doubt the custom has grown since 1859. It now exists in all districts of Bengal, and should, I think, be recognized and allowed with such safeguards as will prevent injury to either landlord or tenant. At present, where the custom exists, the zemindar is powerless to object to the purchaser, and may be saddled with a ryot of the worst character. The ryot, on the other hand, may sell to any one, and hence it may and will happen that he will sell his occupancy right to his money-lender and remain as a sub-tenant on the land. If such sales were limited to *bonâ fide* ryots on the one hand, and

subject to objection from the zemindar on the ground that the purchaser was not a cultivating ryot or a notoriously bad character, they would be unobjectionable. Nothing further seems necessary for the protection of the rights of either party, and I would not go beyond it. For this reason I deprecate allowing the zemindar the right of pre-emption or the right to levy a heavy fine on transfer or a wide power to object.

41. In regard to the limit of 20 per cent. proposed to be placed on enhancement, I have little to add to what I wrote in my last note. I then pointed out that 25 per cent. of the gross produce was in my opinion a rack-rent, and I added that the rent in England was not more then one-eighth of the value of the crops. I also pointed out that the Eastern Landholders Association proposed one-fifth as the highest limit of enhancement which the zemindars thought proper to demand. There is ample material to corroborate this view in the litigation which arose in Nuddea after the passing of Act X of 1859. In the celebrated case of Hills *vs.* Ishore Ghose, W. R. 1864, I find that he sued to enhance the rent of a ryot having a right of occupancy, and succeeded. There the Judges said "according to either of the calculations the rent would amount to Rs. 1-3 a beegah, without taking fractions of an anna. We think that the amount is a fair rate of rent for the *matan* lands, and that plaintiff is entitled to have the rent of the matan lands held by the defendant enhanced to one rupee a beegah. *This is less than one-sixth of the gross proceeds.*" The rent was decreed, but the amount was never realized. No tenant could or would pay it.

42. There is still another case illustrating the great danger of allowing zemindars to enhance to 20 per cent. of the gross produce. During the settlement of the Jellamootah estate a series of experiments were made with a view to determine the proportion of rent to gross produce. The following is the result in tabular form :—

*Statement of produce in connection with the proposed re-settlement of the Majnamuta Estate.*

| | Names of Pergunnahs. | Average outturn of produce per beegah, ascertained in maunds of paddy. | Average price per maund of paddy. | Total value of the produce, including straw. | Deduct expenses of cultivation. | Deduct proposed average rate of rent. | Total deduction. | Balance left to the ryot as net profit. |
|---|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| | | Mds. s. c. | Rs. a. p. | Rs. a. p. | Rs. a. p. | Rs. a. p. | Rs. a. p. | Rs. a. p. |
| 1 | Majnamuta ... | 8 31 4 | 0 12 0 | 7 1 4 | 2 8 0 | 1 11 0 | 4 3 0 | 2 14 4 |
| 2 | Doro Dumman ... | 7 32 0 | 1 0 0 | 9 4 9 | 5 0 0 | 2 2 0 | 7 2 0 | 2 2 9 |
| 3 | Narnamuta* ... | ..... | .. . | ..... | ..... | 1 6 6 | ..... | ..... |
| 4 | Kusba Hidgellee ... | 9 20 0 | 0 12 0 | 7 11 0 | 3 6 0 | 1 14 0 | 5 4 0 | 2 7 0 |
| 5 | Balijora ... | 10 31 0 | 0 12 0 | 8 5 0 | 2 8 0 | 1 11 0 | 4 3 0 | 4 2 0 |
| 6 | Sarifabad ... | 8 29 0 | 0 12 0 | 7 0 9 | 2 8 0 | 1 12 5 | 4 4 5 | 2 12 4 |
| 7 | Kismut Pataspore .. | 8 3 8 | 0 12 0 | 6 9 0 | 2 8 0 | 1 5 6 | 3 13 6 | 2 11 6 |
| 8 | ,, Shipore ... | 6 36 0 | 0 12 0 | 5 10 9 | 2 8 0 | 1 11 0 | 4 3 0 | 1 7 9 |
| 9 | Datta Khoroi ... | 9 20 0 | 0 12 0 | 7 10 0 | 2 8 0 | 1 10 6 | 4 1 6 | 3 8 6 |
| 10 | Amirabad . | 8 32 0 | 0 12 0 | 6 13 0 | 2 8 0 | 1 2 3 | 4 4 3 | 2 8 9 |
| 11 | Majna Nyabad ... | 8 20 0 | 0 12 0 | 6 14 0 | 2 8 0 | 1 9 0 | 4 1 0 | 2 13 0 |

* No experiment was made in Narnamuta. The rates were fixed by comparison with those prevailing in the neighbouring pergunnahs.

From this table it appears that the proportion of rent to gross produce was 25 per cent. What was the result? Government was unable to recover the rents. A considerable permanent reduction amounting, I understand, to more than 10 per cent. in the rental was effected, while it was found necessary to remit arrears to the extent of two and a half lakhs of rupees. In the face of these results it can hardly be doubted that one-fifth of the gross produce is more than the ryots of this country can afford to pay. I have heard it stated that in certain districts the cultivators pay a higher money-rent than one-fifth of the gross produce taken in staple food crops; and where there is garden cultivation, or where crops of exceptional value are grown, this may be true. But specially valuable crops cost a great deal to grow, and a failure of the crop means the ruin of the ryot. I am no advocate of rents graduated according to

the character of the crop, nor do I think that any country can prosper where rents are regulated, not by soil quality but by its produce. Furthermore, if we are to refer to Mahomedan law, it may be observed, that while some maintained it to be allowable to take half of the produce as *kheraj*, the better opinion was that not more than a fifth should be taken. If a fifth was considered equitable in olden times, when population pressed but lightly on the soil, that proportion must be rack rent to-day. As time goes on, as population increases, and the productiveness of the soil grows less, the proportion of one-fifth will become impossible of payment. In former times there was always a difficulty in determining the amount of land held by the cultivators. Then, as now, they steadily opposed any measurement of their holdings, and I think it is the general opinion that they then cultivated and do now cultivate more land than they admit.

43. I think there is some reason to believe that the present rents are too high. This is also the opinion of a body which manages estates the rent rolls of which amount to 57 lakhs of rupees. I refer to the Board of Revenue. In the Board's report for 1883-84, there is the following paragraph :—

"This appearance of bad collections is to be explained by the system on which zemindari accounts are almost invariably kept by private proprietors. While one set of rates is entered as payable in the accounts, another rate is actually paid. The full rent which is entered in the zemindari books may be paid in the most favourable years, but as a rule a zemindar is willing to receive and be satisfied with a rental considerably below the amount of the full demand as shown on his books. The difference is debited to a *hajut* account, or it is merely shown as a balance against the ryot, or in some cases it is kept alive by instalment bonds executed by the ryot. Almost every estate under the Court of Wards comes under its management with large unrealizable balances, and it is found that even the current demand is not realizable in spite of all the exertions of the managing establishment. Year after year the percentage of collections for wards' estates is less than the current demand. The result has generally been considered unsatisfactory, but no other result can be shown without oppressing and harassing the tenantry. It is no exaggeration to say that a fair and liberal zemindar does not collect more than 75 per cent. of his nominal rent-roll on an average of years. There is good reason for believing that in some of the eastern districts the average of late years has not exceeded 60 per cent."

The Members of the Board of Revenue, who manage more property than any zemindar or agent in Bengal, consider that not more than 90 per cent. of the rental in estates coming under their management can be realized "without oppressing and harassing the tenantry," or in other words, the present rent-rolls are at least 10 per cent. too high, and cannot be realized.

44. If this be so, and I can see no reason to doubt the experience of the Board, I think the Government of India should pause before it grants to zemindars any further facilities to enhance or any summary method to realize the already excessive rents. I believe it would be far better for both zemindar and ryot if the rents were not so high. The former would not lose anything by giving up what he cannot now realize without some oppression, and he would have the sympathy of every right-minded person in enforcing his rights against such ryots as could but would not pay. It is proposed by section 41 of the Bill to allow the existing rent to be enhanced up to 25 per cent. by mutual agreement. I confess I dislike this proposal. I do not conceive that any person, looking at the nature of the agreements, of which I have already given extracts, will contend that there is any such thing as freedom of contract between landlord and tenant in Bengal. The ryot submits because he cannot help it. It is not reasonable to suppose that a cultivator in this country, who is strongly attached to his holding, would, if he could help it, agree to give up his right of occupancy in the soil, pay all the taxes which may be levied from his landlord, although this is expressly prohibited by law, and fetter himself by, to him, novel restrictions. Yet numbers of the ryots have done it. In the same way they will agree to any enhancement to pay any amount, trusting that the obligation will never be enforced, or they will by some means or other be able to avoid their liability for the increased rent. If enhancement is at all allowed out of courts, then the amount should be so small as will neither tempt the landlord to demand nor the ryot to agree to pay more than is reasonable, such as ten per cent. on the existing rent. From this point of view I consider that full justice to the zemindars is met by the proposal of the Bengal Government that enhancements out of court should not exceed 2 annas in the rupee of the former rent.

45. These objections are of minor importance in comparison to what I consider the great defect in the Bill. It gives no protection to that great mass of ryots who have not obtained a right of occupancy in the soil. Before Act X of 1859 there was hardly any distinction between resident and non-resident ryots *in Bengal*. Both paid at the customary rate; both were safe from eviction, unless for non-payment of rent. In the draft of Act X of 1859, the present rights given to occupancy tenants, were granted to all resident ryots. This limitation was consistent with the Regulations of the North-West Provinces, which recognized the distinction between resident and non-resident ryots; but was inconsistent with the Statute law of Bengal, which admitted no such distinction. This was not all. When the Bill was circulated, the Board of Revenue in the North-West said that it was a fallacy to regard every "resident ryot and cultivator" to have a right of occupancy in that province, and recommended the 12-years' rule. This was adopted by the Select Committee, who said:

"The laws in force speak of "*khoodkasht* ryots" as possessing rights of occupancy, and in some places the word *khoodkasht* seems to be considered as synonymous with "*resident*." Resident was therefore the word used in the original Bill. But it has been pointed out by the Western Board that residency is not always a condition of occupancy, and it appears after much enquiry it was prescribed by an order of the Government of the North-West Provinces in 1856 as most consistent with general practice and recognised rights that a holding of the same land for 12 years should be considered to give right of occupancy. We have followed this precedent, and altered the section accordingly."

Regulation LI of 1793.
Regulation VIII of 1819.
Section 11, clause 3; section 18, clause 5.

46. It was unfortunate for the ryots of the Lower Provinces of Bengal that the law and precedents of those Provinces were not followed instead of the order of the Government of the North-West Provinces. Starting with Regulation 51 of 1793, which had no reference to Bengal, the Committee drew a distinction between resident and non-resident ryots which has never been recognised by the law in force in the Lower Provinces. This was the first mistake. The second was more serious. The North-Western Provinces is (with the exception of Benares) not permanently settled, and the Government officers from time to time when settlements are revised record what they consider the rights of the tenants. In 1856 Government decided on taking 12 years' cultivation as a test of the right of occupancy, but this could in no wise affect the rights of tenants under the Permanent Settlement in the North-West. Much less could it be said to be a guide for legislation in regard to Bengal. Unfortunately this precedent was followed, and the resident ryot, who admittedly was before Act X of 1859 protected against arbitrary enhancement, was after that Act passed liable to pay whatever his landlord might demand. After some time it was decided that he was also liable to ejectment on notice to quit, and now he has no protection against the imposition of a rack-rent or arbitrary eviction.

The provisions of the present Bill in regard to this class of ryots are to my mind extremely imperfect and inadequate. Justice requires that these ryots should be placed in the position they were in 1859. Under the present Bill there is nothing to prevent a zemindar in the future from rack-renting and ejecting them.

If the Legislature, while professing the right to interfere on behalf of the ryots, does not consider it expedient to give them what in my opinion is only fair justice and restore them to the position they held in 1859, the least it can do is to give them substantial compensation for disturbance. Then after agreeing to pay a fair rent they are arbitrarily evicted by the zemindar. The Government of Bengal proposes to check the capricious exercise of power on the zemindar's part by awarding compensation for disturbance up to a maximum of three years' rent. That I consider an inadequate check.

47. In connection with the present Bill the recent land legislation for Ireland has been referred to, and there is no doubt it deserves the most serious consideration. The claim of the tenants in Ireland to compensation for disturbance was weak in comparison with the claim of the ryots in Bengal, and yet the former obtained compensation on the following scale:—

Where the rent is thirty pounds (three hundred rupees) or under, a sum not exceeding seven years' rent; when the rent is above thirty pounds, a sum not exceeding five years' rent.

Where the rent is above fifty pounds and not exceeding one hundred pounds (one thousand rupees), a sum not exceeding four years' rent.

Where the rent is above one hundred pounds and not exceeding three hundred pounds (three thousand rupees), a sum not exceeding three years' rent.

Where the rent is above three hundred pounds and not exceeding five hundred pounds (five thousand rupees), a sum not exceeding two year's rent.

Where the rent is above five hundred pounds, a sum not exceeding one year's rent.

This is the scale which Parliament considered fair and equitable, although the legal claim to compensation was weak. Here the claim is strong. In Ireland the tenants had no legal ground for saying "our rights were such and such and we have been deprived of them." Here the ryots have been unwittingly deprived of their rights by recent legislation and recent decisions of the Courts, and I think they may fairly ask, if those rights cannot be restored, as they should, that compensation on the same or a higher scale should be granted to them. If this be not done,—if the right to hold their land as long as they pay a fair and equitable rent be not secured to all cultivating ryots,—then I think it better for *them* that the Bill should be abandoned and matters allowed to remain as they are. The force of circumstances might in a few years' time necessitate legislation of a far more comprehensive nature in the interests of the tenantry than any now proposed by the Government of Bengal.